Matrimony, Marriage

COMMON-LAW MARRIAGE.
[. ..A marriage based upon agreement by which the parties agree per verba de presenti to become husband and wife, followed by sexual consummation.

To constitute a marriage legal, at common law, the contract and consent must be per de futuro cum copula, the copula is presumed to have been allowed on the faith of the marriage promise, and that so the parties, at the time of the copula, accepted of each other as man and wife…]

COMMON-LAW MARRIAGE. A marriage based upon agreement by which the parties agree *per verba de presenti* to become husband and wife, followed by sexual consummation.

To constitute a marriage legal, at common law, the contract and consent must be *per verba de presenti*, or if made *per verba de futuro cum copula*, the *copula* is presumed to have been allowed on the faith of the marriage promise, and that so the parties, at the time of the *copula*, accepted of each other as man and wife. 204 Ill. 28.

COMMON-LAW PROCEDURE ACTS. Three acts of parliament, passed in the years 1852, 1854, and 1860, respectively, for the amendment of the procedure in the common-law courts. The common-law procedure

https://archive.org/details/cyclopedicdicti00longgoog

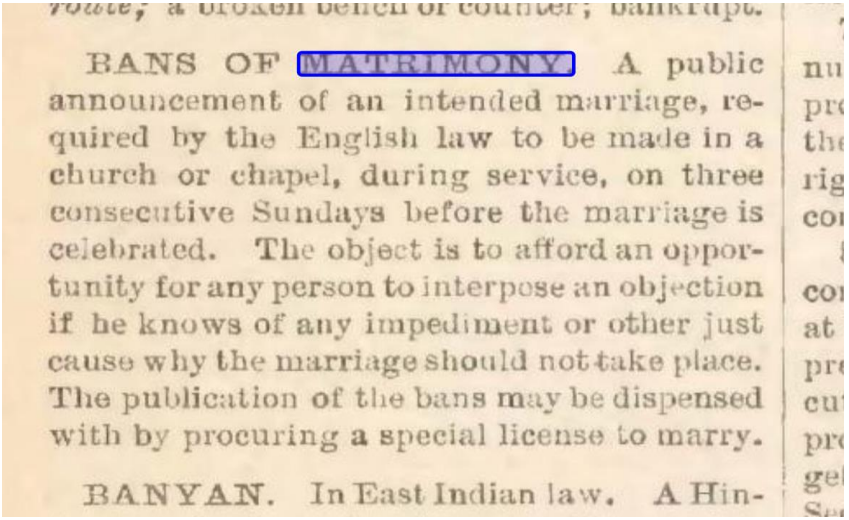
Roman Civil Law Marriage vs Common Law Holy Matrimony

MAT'RIMONY, noun [Latin matrimonium, from mater, mother.] Marriage; wedlock; the union of man and woman for life; the nuptial state. If any man know cause why this couple should not be joined in holy matrimony they are to declare it.
Webster's 1828

Pg.120
BANS OF MATRIMONY:
A public announcement of an intended marriage, required by the English law to be made in a church or chapel, during service, on three consecutive Sundays before the marriage is celebrated. […The publication of the bans *MAY* be dispensed with by procuring a "SPECIAL LICENSE" to marry. Black's Law Dictionary, 1st Edition
1891

MAY, verb aux; preterit tense might.
1. To be possible. We say, a thing may be, or may not be][…a thing may be done…]
Webster's 1828

Pg.477
FAMILY BIBLE:
A Bible containing a record of the births, marriages, and deaths of the members of a family.
Black's Law Dictionary, 1st Edition
1891
https://archive.org/details/blacks-law-dictionary-1st-edition-1891_Petition-of-Right


BANS OF MATRIMONY. A public announcement of an intended marriage, required by the English law to be made in a church or chapel, during service, on three consecutive Sundays before the marriage is celebrated. The object is to afford an opportunity for any person to interpose an objection if he knows of any impediment or other just cause why the marriage should not take place. The publication of the bans may be dispensed with by procuring a special license to marry.

BANYAN. In East Indian law. A Hin-

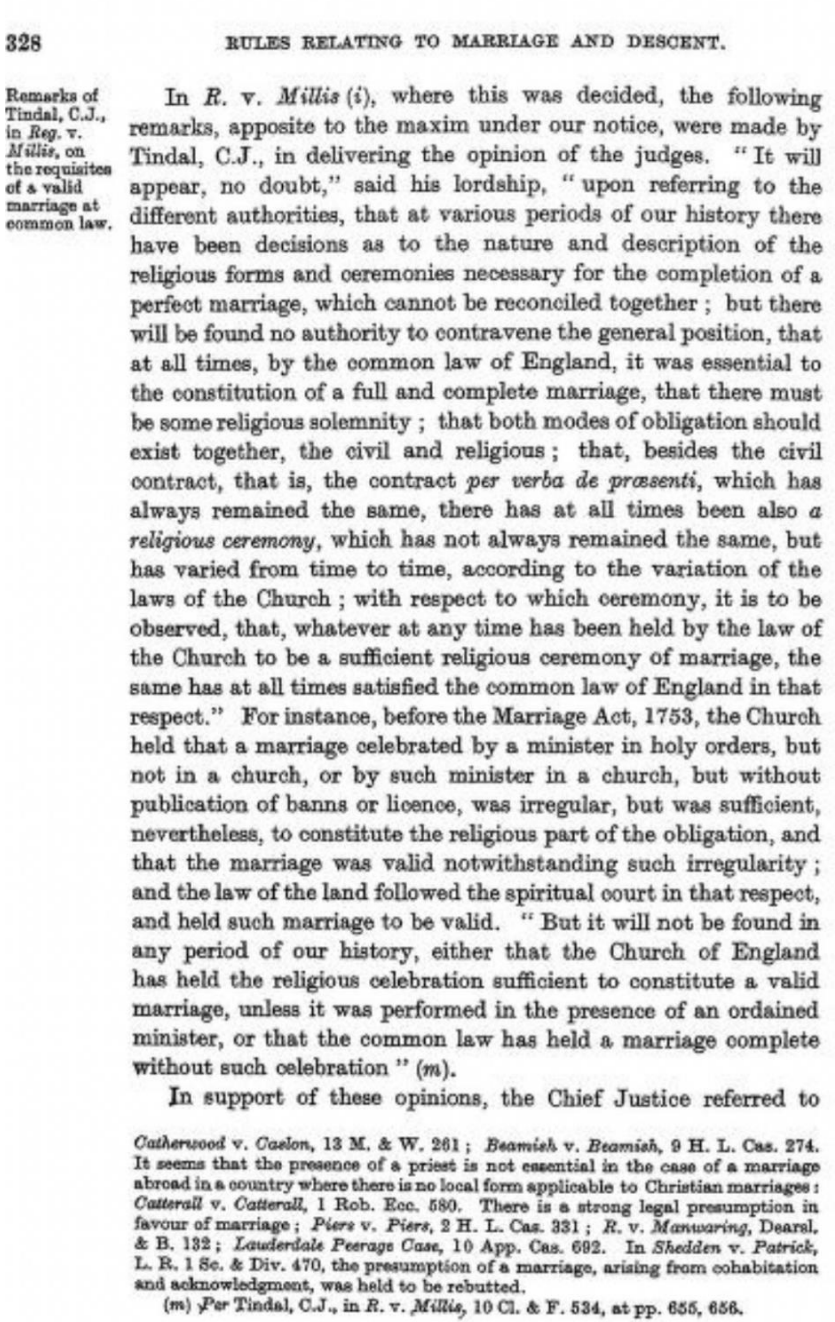
Pg.85
ARBOR CONSANGUINITATIS:
A table, formed in the shape of a tree, showing the genealogy of a family. See the arbor civilis of the civilians and canonists.
Hale, Com. Law, 335.
Black's Law Dictionary, 1st Edition (1891)

Matrimony made easy; or, a new form of marriage, founded on the principles and practice of the holy patriarchs, and the laws of God, and nature

DECLARATION OF BOTH PARTIES

John Milton- 1764- Pg. 11

[And whereas it appears by the History of the Marriage of Adam and Eve, that the Mediation of an earthly PRIEST is not essential to the Validity of a Marriage-Contract, or the Privacy of the Transaction any Hindrance to the same, since in that Case the Children of the said Adam and Eve would have been Bastards, and not Sons: we therefore declare, that no Priest of any Profession has a Right de jure divino, to intermeddle in the Affairs of a Marriage Contract, or the Office of Marriage; nor is the Presence of any other Person necessary, beside the contracting Parties, except only for the Purpose of attempting the same.-- Of which Circumstances, the cunning Part of the Priesthood, in after Ages, took the Advantage, and letting the Lawyers and Magistrates into a Part of their Gains, established a DELUSION, which gave them the joint Command of one of the ſtrongeſt Passions in Human Nature, and thereby a Dominion over the natural Freedom of Mankind; which Imposition, we think it is the Duty of every good Protestant to expose and resist; and of every wise Government to endeavour to remove.



328 RULES RELATING TO MARRIAGE AND DESCENT.

Remarks of Tindal, C.J., in *Reg.* v. *Millis*, on the requisites of a valid marriage at common law.

In *R.* v. *Millis* (*i*), where this was decided, the following remarks, apposite to the maxim under our notice, were made by Tindal, C.J., in delivering the opinion of the judges. "It will appear, no doubt," said his lordship, "upon referring to the different authorities, that at various periods of our history there have been decisions as to the nature and description of the religious forms and ceremonies necessary for the completion of a perfect marriage, which cannot be reconciled together; but there will be found no authority to contravene the general position, that at all times, by the common law of England, it was essential to the constitution of a full and complete marriage, that there must be some religious solemnity; that both modes of obligation should exist together, the civil and religious; that, besides the civil contract, that is, the contract *per verba de præsenti*, which has always remained the same, there has at all times been also *a religious ceremony*, which has not always remained the same, but has varied from time to time, according to the variation of the laws of the Church; with respect to which ceremony, it is to be observed, that, whatever at any time has been held by the law of the Church to be a sufficient religious ceremony of marriage, the same has at all times satisfied the common law of England in that respect." For instance, before the Marriage Act, 1753, the Church held that a marriage celebrated by a minister in holy orders, but not in a church, or by such minister in a church, but without publication of banns or licence, was irregular, but was sufficient, nevertheless, to constitute the religious part of the obligation, and that the marriage was valid notwithstanding such irregularity; and the law of the land followed the spiritual court in that respect, and held such marriage to be valid. "But it will not be found in any period of our history, either that the Church of England has held the religious celebration sufficient to constitute a valid marriage, unless it was performed in the presence of an ordained minister, or that the common law has held a marriage complete without such celebration" (*m*).

In support of these opinions, the Chief Justice referred to

Catherwood v. *Caslon*, 13 M. & W. 261; *Beamish* v. *Beamish*, 9 H. L. Cas. 274. It seems that the presence of a priest is not essential in the case of a marriage abroad in a country where there is no local form applicable to Christian marriages: *Catterall* v. *Catterall*, 1 Rob. Ecc. 580. There is a strong legal presumption in favour of marriage; *Piers* v. *Piers*, 2 H. L. Cas. 331; *R.* v. *Manwaring*, Dearsl. & B. 132; *Lauderdale Peerage Case*, 10 App. Cas. 692. In *Shedden* v. *Patrick*, L. R. 1 Sc. & Div. 470, the presumption of a marriage, arising from cohabitation and acknowledgment, was held to be rebutted.

(*m*) Per Tindal, C.J., in *R.* v. *Millis*, 10 Cl. & F. 534, at pp. 655, 656.

https://archive.org/details/bim_eighteenth-century_matrimony-made-easy-or-_free-john_1764

Pg. 11
This being repeated by both Parties, the Man with his Right Hand, taking the Woman by her Right Hand, shall say, Agreably then to this Declaratian, take you —, to my wedded Wife, aſter the Example of the Holy PATRIARCHY, and according to the Laws of God and NATURE, though not according to the Laws of this LAND: however this our Contract shall have all the Advantage of an English Marriage, with Respect to mutual Kindness, Assistance, Fidelity, and Communication of . and Substance; out of which, as far as it is in our Disposal, we will, by mutual Consent, reciprocally, faithfully,and conſcienticuſiy, make Proviſion for our Children, as we foresee Occasion. And to prevent any ill Conſequences to them or curſeFves, from any Ads of Incon- fancy, or carnal Commerce with Strangers, we do moſt religiously promiſe, that in Case of such Accidents, (which God prevent) we will each to each most punctually disclose, and confess the same, before we proceed again to any conjugal Embraces, or any bodily Contact, which may communicate Infection or Disease, which is now the natural Consequence of Fornication, or the promiscuous use of different Men and Women. And for our better Security herein, against the Frailties of human Nature, we stipulate that any Attempt to conceal a Delinquency of this sort, shall be subject to the Penalties agreed upon, in the + Articles, which we have previously made, and excuted for that purpose. And for the Performance of this our Contract, to the best of my Power, I give you my serious and solemn Engagement, by plighting my Truth. Then loosing their Hands, the Woman with her right Hand shall take the Man by his, and repeat the same. 1 — take you —, for my wedded Husband, &c. (as before.) Signed this Day of &cc. by us the contracting A.B., C.D.

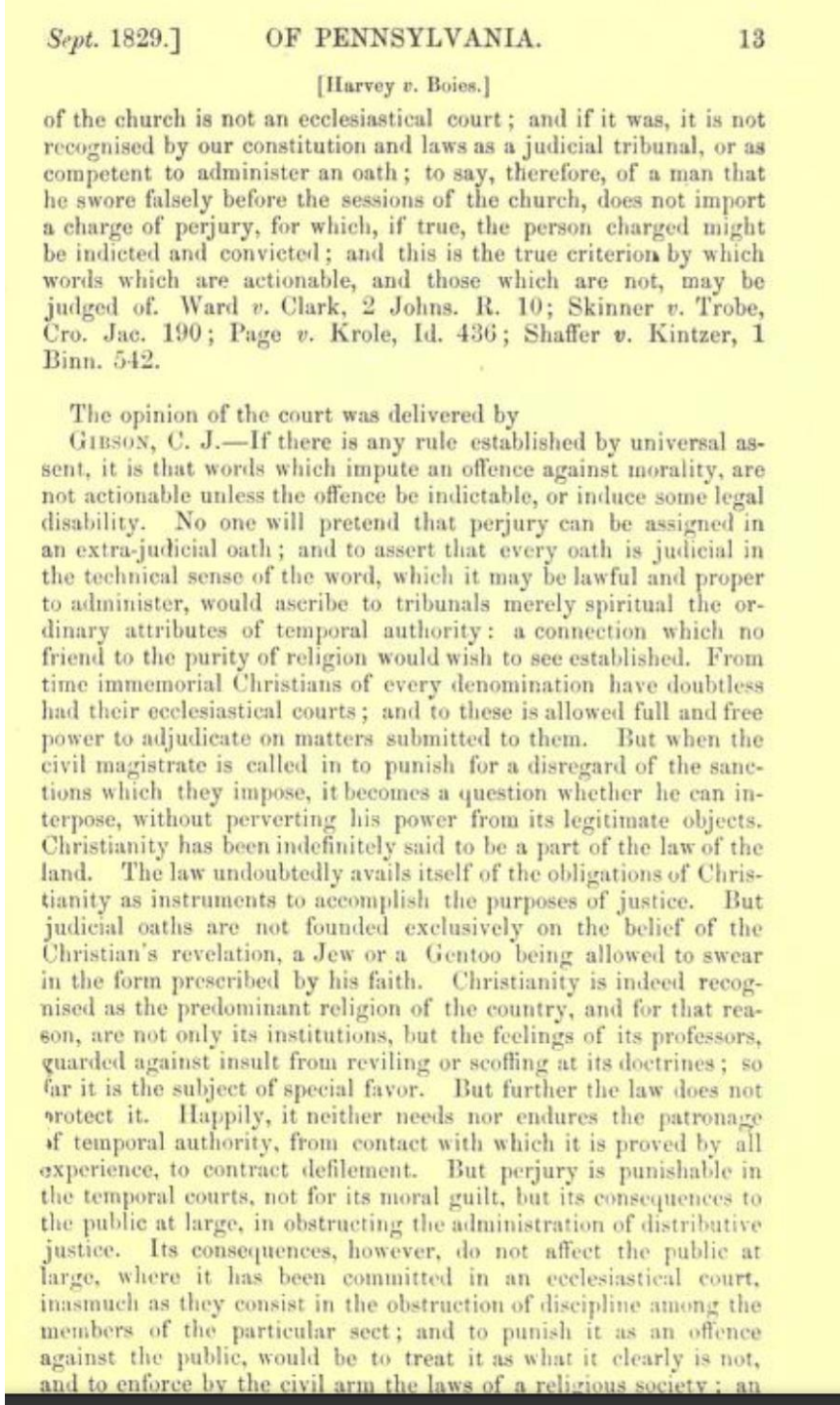
https://archive.org/details/bim_eighteenth-century_matrimony-made-easy-or-_free-john_1764

Reports of cases argued and adjudged in the Supreme Court of Pennsylvania
William Rawle
Reports from 1829-1832
Vol. 3, by C.B. Penrose and Frederick Watts
Pg. 13
[...From time immemorial Christians of every denomination have doubtless had their ecclesiastical courts ; and to these is allowed full and free power to adjudicate on matters submitted to them.
But when the civil magistrate is called in to punish for a disregard of the sanctions which they impose, it becomes a question whether he can interpose, without perverting his power from its legitimate objects.

Christianity has been indefinitely said to be a part of the law of the land...]

Maxim: The Law of God and the law of the land are all one.

https://archive.org/details/reportsofcasesar01rawliala



Sept. 1829.] OF PENNSYLVANIA. 13

[Harvey *v.* Boies.]

of the church is not an ecclesiastical court; and if it was, it is not recognised by our constitution and laws as a judicial tribunal, or as competent to administer an oath; to say, therefore, of a man that he swore falsely before the sessions of the church, does not import a charge of perjury, for which, if true, the person charged might be indicted and convicted; and this is the true criterion by which words which are actionable, and those which are not, may be judged of. Ward *v.* Clark, 2 Johns. R. 10; Skinner *v.* Trobe, Cro. Jac. 190; Page *v.* Krole, Id. 436; Shaffer *v.* Kintzer, 1 Binn. 542.

The opinion of the court was delivered by

Gibson, C. J.—If there is any rule established by universal assent, it is that words which impute an offence against morality, are not actionable unless the offence be indictable, or induce some legal disability. No one will pretend that perjury can be assigned in an extra-judicial oath; and to assert that every oath is judicial in the technical sense of the word, which it may be lawful and proper to administer, would ascribe to tribunals merely spiritual the ordinary attributes of temporal authority: a connection which no friend to the purity of religion would wish to see established. From time immemorial Christians of every denomination have doubtless had their ecclesiastical courts; and to these is allowed full and free power to adjudicate on matters submitted to them. But when the civil magistrate is called in to punish for a disregard of the sanctions which they impose, it becomes a question whether he can interpose, without perverting his power from its legitimate objects. Christianity has been indefinitely said to be a part of the law of the land. The law undoubtedly avails itself of the obligations of Christianity as instruments to accomplish the purposes of justice. But judicial oaths are not founded exclusively on the belief of the Christian's revelation, a Jew or a Gentoo being allowed to swear in the form prescribed by his faith. Christianity is indeed recognised as the predominant religion of the country, and for that reason, are not only its institutions, but the feelings of its professors, guarded against insult from reviling or scoffing at its doctrines; so far it is the subject of special favor. But further the law does not protect it. Happily, it neither needs nor endures the patronage of temporal authority, from contact with which it is proved by all experience, to contract defilement. But perjury is punishable in the temporal courts, not for its moral guilt, but its consequences to the public at large, in obstructing the administration of distributive justice. Its consequences, however, do not affect the public at large, where it has been committed in an ecclesiastical court, inasmuch as they consist in the obstruction of discipline among the members of the particular sect; and to punish it as an offence against the public, would be to treat it as what it clearly is not, and to enforce by the civil arm the laws of a religious society; an

To dissolve the marriage between Lydia Ann Patton and Green C. Patton.
Relating to the mileage of Sheriff in Owyhee county in criminal cases.
To dissolve the marriage between Cathrine More and David More.
To compensate William Frazer and B. G. Hooker for services rendered and expenses incurred, in the arrest and return of John Thomas.
To dissolve the marriage between L. P. Higbee and Sophia E. Higbee.
Defining the place of residence of the District Attorney of District number two.
To change the name of Carl Johan Brim Skoo to Charles Wilson.
To provide for the printing of certain Acts.
To amend an Act to incorporate Boise City in Ada county.
To provide for a jailor in the County of Owyhee.
Relating to the recording of quartz claims in Owyhee and Alturas counties, and fixing the fees therefor.

https://archive.org/details/revisedlawsofidaho00

THE

COMPILED AND REVISED

LAWS

OF THE

TERRITORY OF IDAHO,

OF A GENERAL NATURE PASSED AT, OR CONTINUED IN FORCE BY THE

EIGHTH SESSION

OF THE

LEGISLATIVE ASSEMBLY

CONVENED ON THE SEVENTH DAY OF DECEMBER, A. D. 1874, AT

BOISE CITY.

TOGETHER WITH THE CONSTITUTION OF THE UNITED STATES, DECLARATION OF INDEPENDENCE AND ACTS OF CONGRESS CONCERNING THE TERRITORY.

MILTON KELLY, TERRITORIAL PRINTER.
1875.

Pg.523 [... 2. Divorces are of two kinds; 1. a vinculo matrimonii, (q.v.) which dissolves and totally severs the marriage tie; and, 2. a mensa et thoro, (q.v.) which merely separates the parties.

3. The divorce a vinculo was never granted by the ecclesiastical law except for the most grave reasons. These, according to Lord Coke, (Co. Litt. 235, a,) are causa praecontractus, causa metus, causa impotentiae, seu frigiditatis, causa affinitatis, et causa consanguinitatis. [pre-contraction, duress, the cause of impotence, or coldness, the cause of kinship, and the cause of blood relationship]

In England such a divorce bastardizes the issue, and generally speaking, is allowed only on the ground of some preexisting cause. Reeves' Dorn. Rel. 204-5; but sometimes by act of parliament for a supervenient cause. 1 Bl. Com. 440. When the marriage was dissolved for canonical causes of impediment, existing previous to its taking place, it was declared void ab initio.

4. In the United States, divorces a vinculo are granted by the state legislatures for such causes as may be sufficient to induce the members to vote in favor of granting them; and they are granted by the courts to which such jurisdiction is given, for certain causes particularly provided for by law...]

https://archive.org/details/7817906-bouvier-s-common-law-dictionary/page/522/mode/2up

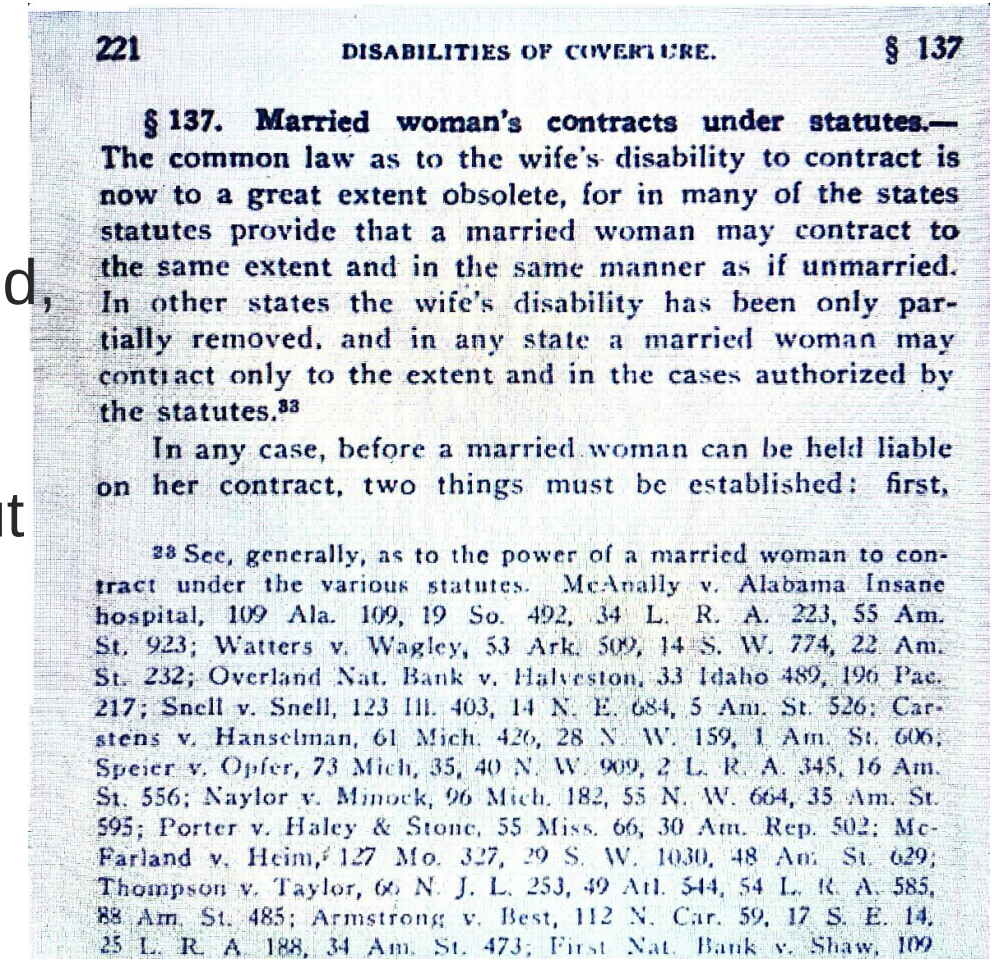
In early civilizations, marriage and marriage dissolution were considered private matters. Marriage and divorce were first placed under comprehensive state regulation in Rome during the reign of Augustus (27 B.C.–
A.D. 14). As Christianity spread, governments came under religious control, and the Roman Catholic Church strictly forbade divorce. The only exception to this ban was if one of t he parties had not converted to Christianity before the marriage.
During the 1500s, the Protestant Reformation movement in Europe rejected religious control over marriage and helped to move the matter of divorce from the church to the state . European courts granted divorces upon a showing of fault, such as **Adultery**, cruelty, or desertion.
England struggled with the matter of divorce. From 1669 to 1850, only 229 divorces were granted in that country. Marriage and divorce were controlled by the Anglican Church, which, like the Roman Catholic Church, strictly forbade divorce. The Anglican Church allowed separations, but neither spouse was allowed to remarry while the other was still livi ng.
The law of divorce in the American colonies varied according to the religious and social mores of the founding colonists. England insisted that its American colonies refrain from enacting legislation that contradicted the restrictive English laws, and a colonial divorce was not considered final until it had been approved by the English monarch. Despite thes e deterrents, a few northern colonies adopted laws allowing divorce in the 1650s.
Divorce law in the middle and northern colonies was often curious. Under one late-seventeenth-
century Pennsylvania law, divorce seemed a mere afterthought: If a married man committed **Sodomy** or bestiality, his punishment was castration, and "the injured wife shall hav e a divorce if required." In Connecticut, divorce was allowed on the grounds of adultery, desertion, and the husband's failure in his conjugal duties. In the Massachusetts Bay Col ony, a woman was allowed to divorce her husband if the husband had committed adultery and another offense. A man could divorce if his wife committed adultery or the "cruel u sage of the husband."
After the Revolutionary War, divorce law in the United States continued to develop regionally. The U.S. Constitution was silent as to divorce, leaving the matter to the states for r egulation. For the next 150 years, state legislatures passed and maintained laws that granted divorce only upon a showing of fault on the part of a spouse. If a divorce were cont ested, the divorcing spouse would be required to establish, before a court, specific grounds for the action. If the court felt that the divorcing spouse had not proved the grounds al leged, it would be free to deny the petition for divorce.
The most common traditional grounds for divorce were cruelty, desertion, and adultery. Other grounds included nonsupport or neglect, alcoholism, drug addiction, insanity, crimin al conviction, and voluntary separation. Fault-based divorce laws proliferated, but not without protest. In 1901, author **James**
Bryce was moved to remark that U.S. divorce laws were "the largest and the strangest, and perhaps the saddest, body of legislative experiments in the sphere of **Family**
Law which free, self-governing communities have ever tried."
In 1933, New Mexico became the first state to allow divorce on the ground of incompatibility. This new ground reduced the need for divorcing spouses to show fault. In 1969, Cali fornia became the first state to completely revise its divorce laws. The California Family Law Act of 1969 provided, in part, that only one of two grounds was necessary to obtain a divorce: irreconcilable differences that have caused the irremediable breakdown of the marriage, or incurable insanity (Cal. Civ. Code § D. 4, pt. 5 [West], *repealed by* Stat. 19 92, ch. 162 [A.B. 2650], § 3 [operative Jan. 1, 1994]). In divorce proceedings, testimony or other evidence of specific acts of misconduct were excluded. The one exception to thi s rule was where the court was required to award child custody. In such a case, serious misconduct on the part of one parent would be relevant.

https://legal-dictionary.thefreedictionary.com/divorce

COVERTURE, *noun*

1. Covering; shelter; defense.

2. In law, the state of a married woman, who is considered as under cover, or the power of her husband, and therefore called a feme-covert, or femme-couvert. The *coverture* of a woman disables her from making contracts to the prejudice of herself or husband, without his allowance or confirmation. Webster's 1828



221 DISABILITIES OF COVERTURE. § 137

§ 137. **Married woman's contracts under statutes.**— The common law as to the wife's disability to contract is now to a great extent obsolete, for in many of the states statutes provide that a married woman may contract to the same extent and in the same manner as if unmarried. In other states the wife's disability has been only partially removed, and in any state a married woman may contract only to the extent and in the cases authorized by the statutes.[83]

In any case, before a married woman can be held liable on her contract, two things must be established: first,

[83] See, generally, as to the power of a married woman to contract under the various statutes. McAnally v. Alabama Insane hospital, 109 Ala. 109, 19 So. 492, 34 L. R. A. 223, 55 Am. St. 923; Watters v. Wagley, 53 Ark. 509, 14 S. W. 774, 22 Am. St. 232; Overland Nat. Bank v. Halveston, 33 Idaho 489, 196 Pac. 217; Snell v. Snell, 123 Ill. 403, 14 N. E. 684, 5 Am. St. 526; Carstens v. Hanselman, 61 Mich. 426, 28 N. W. 159, 1 Am. St. 606; Speier v. Opfer, 73 Mich. 35, 40 N. W. 909, 2 L. R. A. 345, 16 Am. St. 556; Naylor v. Minock, 96 Mich. 182, 55 N. W. 664, 35 Am. St. 595; Porter v. Haley & Stone, 55 Miss. 66, 30 Am. Rep. 502; McFarland v. Heim, 127 Mo. 327, 29 S. W. 1030, 48 Am. St. 629; Thompson v. Taylor, 66 N. J. L. 253, 49 Atl. 544, 54 L. R. A. 585, 88 Am. St. 485; Armstrong v. Best, 112 N. Car. 59, 17 S. E. 14, 25 L. R. A. 188, 34 Am. St. 473; First Nat. Bank v. Shaw, 109

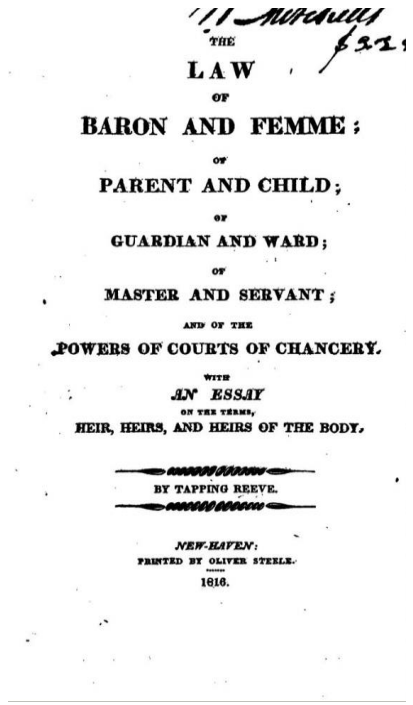
DISABILITIES OF COVERIURE.

§ 137. Married woman's contracts under statutes.-The common law as to the wife's disability to contract is now to a great extent obsolete, for in many of the states statutes provide that a married woman may contract to the same extent and in the same manner as if unmarried.

In other states the wife's disability has been only partially removed, and in any state a married woman may contact only to the extent and in the cases authorized by the statutes.83

https://www.google.com/books/edition/A_Treatise_on_the_Law_of_Domestic_Relati/XSHGAAAAIAAJ?hl=en&gbpv=1&pg=PR21&printsec=frontcover

The law of baron and femme, of parent and child, of guardian and ward, of master and servant, and of the powers of courts of chancery [Roman Civil Law] : with an essay on the terms, heir, heirs, and heirs of the body
Tapping Reeve
Publication date 1816


THE
LAW
OF
BARON AND FEMME;
OF
PARENT AND CHILD;
OF
GUARDIAN AND WARD;
OF
MASTER AND SERVANT;
AND OF THE
POWERS OF COURTS OF CHANCERY.
WITH
AN ESSAY
ON THE TERMS,
HEIR, HEIRS, AND HEIRS OF THE BODY.
BY TAPPING REEVE.
NEW-HAVEN:
PRINTED BY OLIVER STEELE.
1816.

Keywords: Domestic relations -- United States, Equity pleading and procedure -- United States, Inheritance and succession -- United States, Domestic relations, Equity pleading and procedure

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[..The code Napoleon regards marriage only as a civil contract, and allows divorces not only for several reasonable causes, such as adultery, and Grievous injuries, to be submitted to a judicial tribunal, but also without cause, and founded merely upon mutual consent, according to the usage of the ancient Romans. This consent is subjected to several restraints which do in fact create very great and serious checks upon the abuse of the privilege...]

https://lonang.com/library/reference/kent-commentaries-american-law/kent-27/

Incorporation of Churches, Marriage Registration, fees

17th of November, 1784,

" Resolved, that it is the opinion of this committee, that acts ought to pass for the incorporation of all societies of the Christian religion, which may apply for the same…] […”"The principle being thus established in ralation to all religious societies, which should desire a legal existence for the benefit of acquiring and holding property to the use of their respective churches, leave was given, on the same day, to bring in a bill to incorporate the clergy of the protestant episcopal church, which had brought itself within that principle by having applied for an act of incorporation; and Mr. Henry was one, but not the chairman, of the committee appointed to bring in that bill. How a measure which holds out to all religious societies, equally, the same benefit, can be charged with partiality, because accepted by one only, it is not very easy to discern. It would seem, to an ordinaiy mind, that, on the same principle, the Christian rehgion itself might be charged with partiality, since its offers, though made to all, are accepted but by few…]

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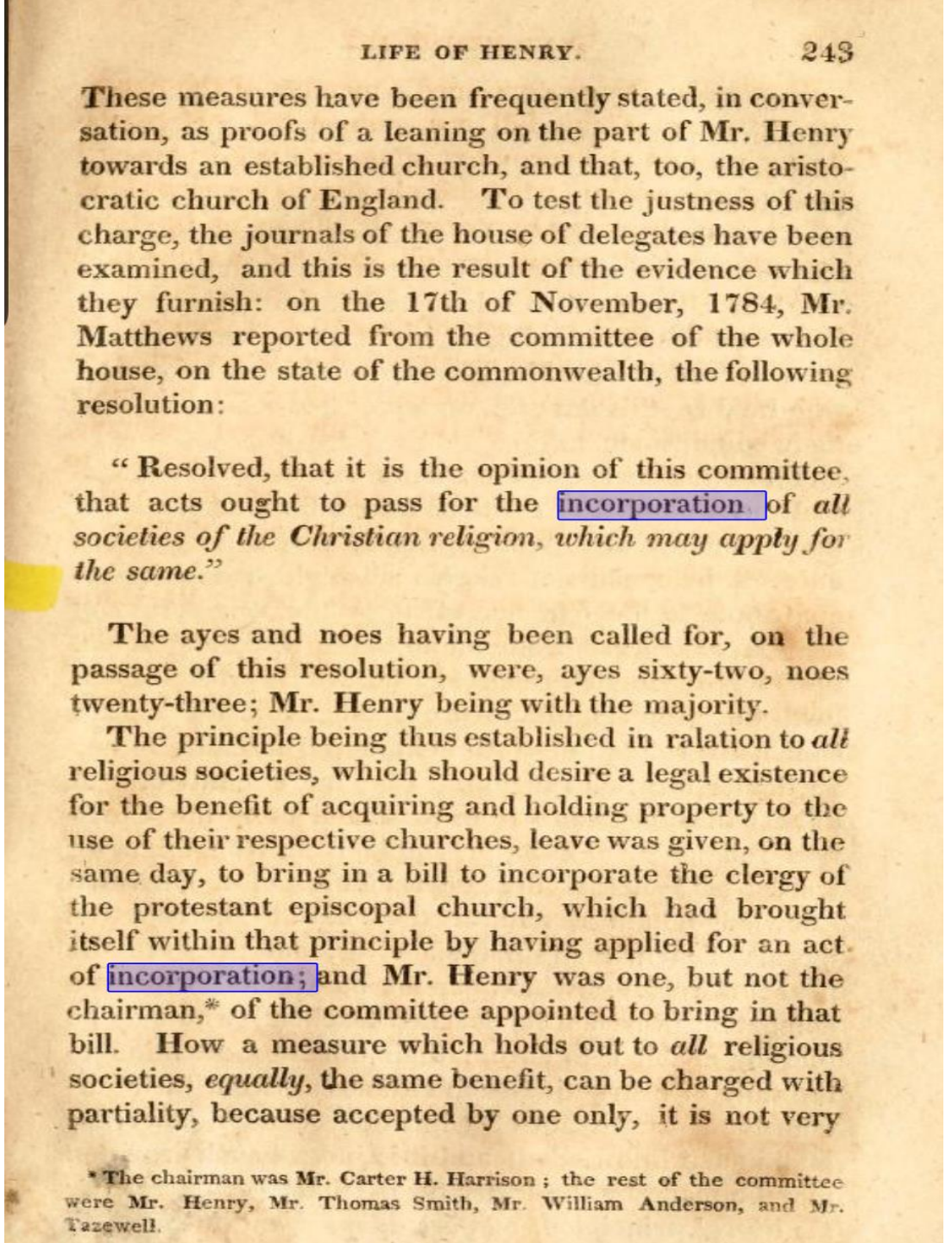


LIFE OF HENRY. 243

These measures have been frequently stated, in conversation, as proofs of a leaning on the part of Mr. Henry towards an established church, and that, too, the aristocratic church of England. To test the justness of this charge, the journals of the house of delegates have been examined, and this is the result of the evidence which they furnish: on the 17th of November, 1784, Mr. Matthews reported from the committee of the whole house, on the state of the commonwealth, the following resolution:

"Resolved, that it is the opinion of this committee, that acts ought to pass for the incorporation of *all societies of the Christian religion, which may apply for the same.*"

The ayes and noes having been called for, on the passage of this resolution, were, ayes sixty-two, noes twenty-three; Mr. Henry being with the majority.

The principle being thus established in ralation to *all* religious societies, which should desire a legal existence for the benefit of acquiring and holding property to the use of their respective churches, leave was given, on the same day, to bring in a bill to incorporate the clergy of the protestant episcopal church, which had brought itself within that principle by having applied for an act of incorporation; and Mr. Henry was one, but not the chairman,* of the committee appointed to bring in that bill. How a measure which holds out to *all* religious societies, *equally*, the same benefit, can be charged with partiality, because accepted by one only, it is not very

* The chairman was Mr. Carter H. Harrison; the rest of the committee were Mr. Henry, Mr. Thomas Smith, Mr. William Anderson, and Mr. Tazewell.

[…SECTION 2760. Any number of persons associated together for any purpose, where pecuniary profit is not their object, may, in accordance with the rules, regulations or discipline of such association, elect directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in….]

[… Fifth. — Other regulations not repugnant to the laws of the state and consonant with the objects of the corporation….]

https://archive.org/details/corplawofidaho00fifthses

such certificate shall have been withdrawn or revoked, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred ($100.00) dollars, or imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

Chapter VIII.--Religious, Social and Benevolent Corporations.

SECTION		SECTION	
2760.	Corporations for purposes other than profit, how formed.	2764.	Corporations, by order of district court, may mortgage or sell real estate.
2761.	Additional facts articles of incorporation to set out.	2765.	What may be provided for in their by-laws, etc.
2762.	Corporations to hold property.	2766.	Mutual relief associations.
2763.	How much land certain societies may hold.		

SECTION 2760. Any number of persons associated together for any purpose, where pecuniary profit is not their object, may, in accordance with the rules, regulations or discipline of such association, elect directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in this title.

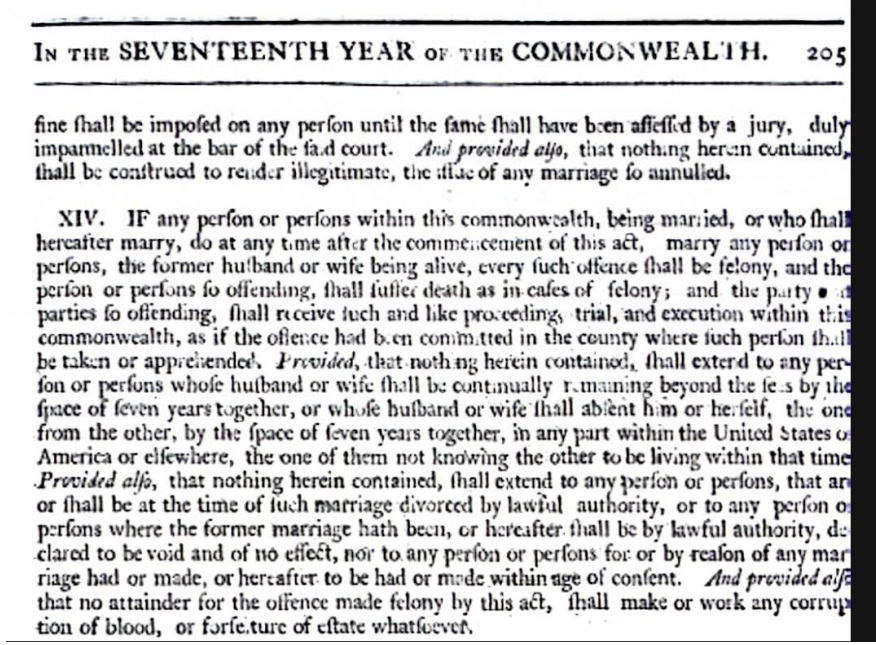
SEC. 2761. In addition to the requirements of chapter I, the articles of incorporation of any such association must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

SEC. 2762. All such corporations may hold all the property of the association owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association.

SEC. 2763. In addition to that provided for in the preceding section, Masons, Odd Fellows, and pioneer incorporated associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith.

SEC. 2764. Religious, social and benevolent corporations, through their directors or trustees, may mortgage or sell real property held by them whenever a majority of the members of the said corporation may so direct by their vote: Provided, That notice of the intended vote on the proposition be published in three newspapers of general circulation at least once in each of

AND that a register of all marriages may be preserved; Be it enacted, that a certificate of every marriage hereafter solemnized, signed by the minister celebrating the same, or in the caſe of Quakers, Mennonites, and other societies that solemnize their marriages by the conſent of the parties taken in open congregation as aforeſaid, by the clerk of the meeting, ſhall be by such minister or clerk, (as the caſe may be) transmitted to the clerk of the county or corporation, wherein the marriage is solemnized, within twelve months thereafter, to be entered on record by the clerk, in a book by him to be kept for that purpose, Which shall be evidence of all such marriages. The clerk ſhall be entitled to demand and receive of the party ſo married, the ſum df twenty-five cents for recording such certificate, and giving the bearer a receipt therefor….]



IN THE SEVENTEENTH YEAR OF THE COMMONWEALTH. 205

fine ſhall be impoſed on any perſon until the ſame ſhall have been aſſeſſed by a jury, duly impannelled at the bar of the ſaid court. *And provided alſo*, that nothing herein contained, ſhall be conſtrued to render illegitimate, the iſſue of any marriage ſo annulled.

XIV. IF any perſon or perſons within this commonwealth, being married, or who ſhall hereafter marry, do at any time after the commencement of this act, marry any perſon or perſons, the former huſband or wife being alive, every ſuch offence ſhall be felony, and the perſon or perſons ſo offending, ſhall ſuffer death as in caſes of felony; and the party • parties ſo offending, ſhall receive ſuch and like proceedings trial, and execution within this commonwealth, as if the offence had been committed in the county where ſuch perſon ſhall be taken or apprehended. *Provided*, that nothing herein contained, ſhall extend to any perſon or perſons whoſe huſband or wife ſhall be continually remaining beyond the ſea by the ſpace of ſeven years together, or whoſe huſband or wife ſhall abſent him or herſelf, the one from the other, by the ſpace of ſeven years together, in any part within the United States of America or elſewhere, the one of them not knowing the other to be living within that time. *Provided alſo*, that nothing herein contained, ſhall extend to any perſon or perſons, that are or ſhall be at the time of ſuch marriage divorced by lawful authority, or to any perſon or perſons where the former marriage hath been, or hereafter ſhall be by lawful authority, declared to be void and of no effect, nor to any perſon or perſons for or by reaſon of any marriage had or made, or hereafter to be had or made within age of conſent. *And provided alſo*, that no attainder for the offence made felony by this act, ſhall make or work any corruption of blood, or forfeiture of eſtate whatſoever.

XIV. IF any person or persons within this commonwealth, being married, or who shall hereafter marry, do at any time after the commencement of this act, marry any person or persons, the former husband or wife being alive, every such offense hall be felony, and the person or persons so offending, shall suffer death as in cafes of felony; and the party • parties to offending; Shall receive such and like proceedings trial, and execution within this commonwealth, as if the offense had b.on committed in the county where such person shall be taken or apprehended . Provided, that nothing herein contained, shall extend to any person or persons whole husband or wife shall b: continually remaining beyond the sea by the space of seven years together, or whose husband or wife shall absent him or her, the one from the other, by the pace of seven years together, in any part within the United States o America or cite where, the one of them not knowing the other to be living within that time

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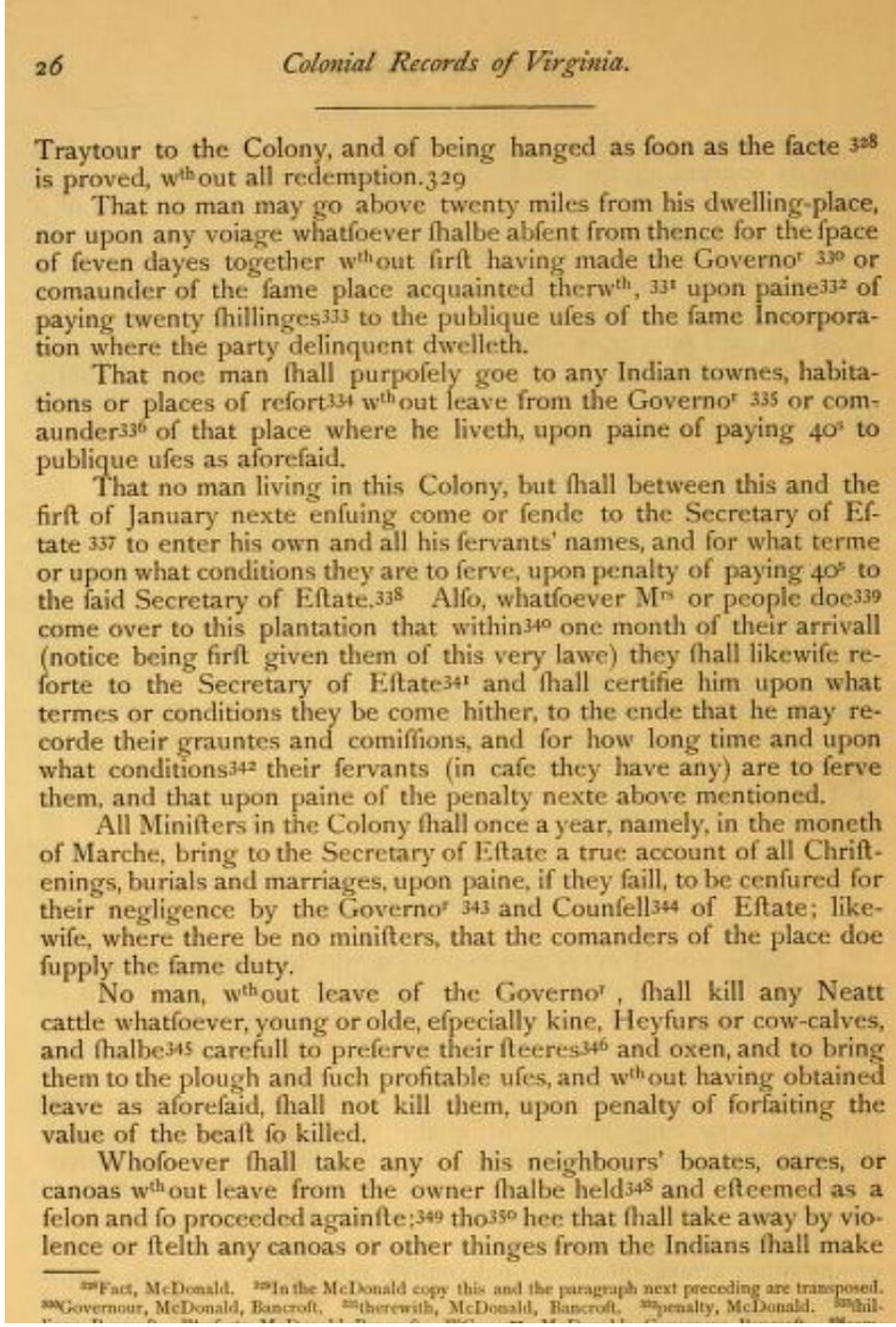
All Ministers in the Colony shall once a year, namely, in the month of Marche, bring to the Secretary of Estate a true account of all Christenings, burials and marriages, upon paine, if they fail, to be censured for their negligence by the Governor and Counsels of Estate; likewise, where there be no ministers, that the commanders of the place doe supply the same duty…]



26 *Colonial Records of Virginia.*

Traytour to the Colony, and of being hanged as foon as the facte [328] is proved, w[th]out all redemption. 329

That no man may go above twenty miles from his dwelling-place, nor upon any voiage whatfoever fhalbe abfent from thence for the fpace of feven dayes together w[th]out firft having made the Governo[r] [330] or comaunder of the fame place acquainted therw[th], [331] upon paine [332] of paying twenty fhillinges [333] to the publique ufes of the fame Incorporation where the party delinquent dwelleth.

That noe man fhall purpofely goe to any Indian townes, habitations or places of refort [334] w[th]out leave from the Governo[r] [335] or comaunder [336] of that place where he liveth, upon paine of paying 40[s] to publique ufes as aforefaid.

That no man living in this Colony, but fhall between this and the firft of January nexte enfuing come or fende to the Secretary of Eftate [337] to enter his own and all his fervants' names, and for what terme or upon what conditions they are to ferve, upon penalty of paying 40[s] to the faid Secretary of Eftate. [338] Alfo, whatfoever M[rs] or people doe [339] come over to this plantation that within [340] one month of their arrivall (notice being firft given them of this very lawe) they fhall likewife reforte to the Secretary of Eftate [341] and fhall certifie him upon what termes or conditions they be come hither, to the ende that he may recorde their grauntes and comiffions, and for how long time and upon what conditions [342] their fervants (in cafe they have any) are to ferve them, and that upon paine of the penalty nexte above mentioned.

All Miniſters in the Colony ſhall once a year, namely, in the moneth of Marche, bring to the Secretary of Eſtate a true account of all Chriſtenings, burials and marriages, upon paine, if they faill, to be cenſured for their negligence by the Governo[r] [343] and Counſell [344] of Eſtate; likewiſe, where there be no miniſters, that the comanders of the place doe ſupply the ſame duty.

No man, w[th]out leave of the Governo[r], ſhall kill any Neatt cattle whatſoever, young or olde, eſpecially kine, Heyfurs or cow-calves, and ſhalbe [345] carefull to preſerve their ſteeres [346] and oxen, and to bring them to the plough and ſuch profitable uſes, and w[th]out having obtained leave as aforeſaid, ſhall not kill them, upon penalty of forfaiting the value of the beaſt ſo killed.

Whoſoever ſhall take any of his neighbours' boates, oares, or canoas w[th]out leave from the owner ſhalbe held [348] and eſteemed as a felon and ſo proceeded againſte; [349] tho [350] hee that ſhall take away by violence or ſtelth any canoas or other thinges from the Indians ſhall make

[328] Fact, McDonald. [329] In the McDonald copy this and the paragraph next preceding are transposed. [330] Governour, McDonald, Bancroft. [331] therewith, McDonald, Bancroft. [332] penalty, McDonald. [333] hil-

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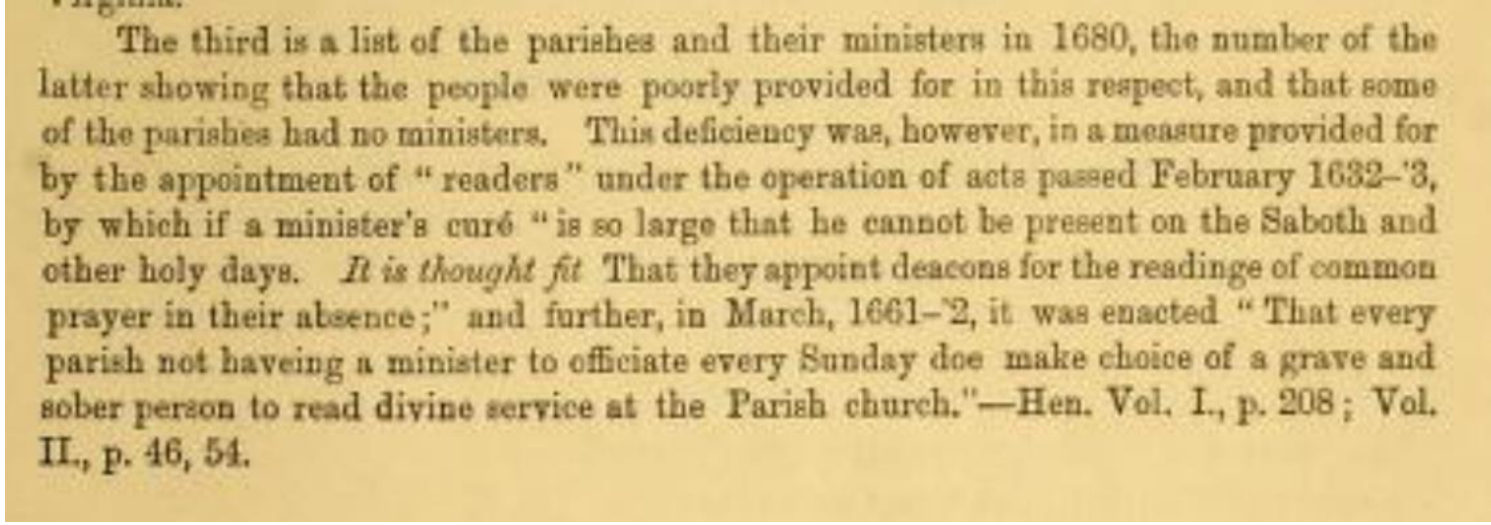

The third is a list of the parishes and their ministers in 1680, the number of the latter showing that the people were poorly provided for in this respect, and that some of the parishes had no ministers. This deficiency was, however, in a measure provided for by the appointment of "readers" under the operation of acts passed February 1632–'3, by which if a minister's curé "is so large that he cannot be present on the Saboth and other holy days. *It is thought fit* That they appoint deacons for the readinge of common prayer in their absence;" and further, in March, 1661–'2, it was enacted "That every parish not haveing a minister to officiate every Sunday doe make choice of a grave and sober person to read divine service at the Parish church."—Hen. Vol. I., p. 208; Vol. II., p. 46, 54.

Page 89

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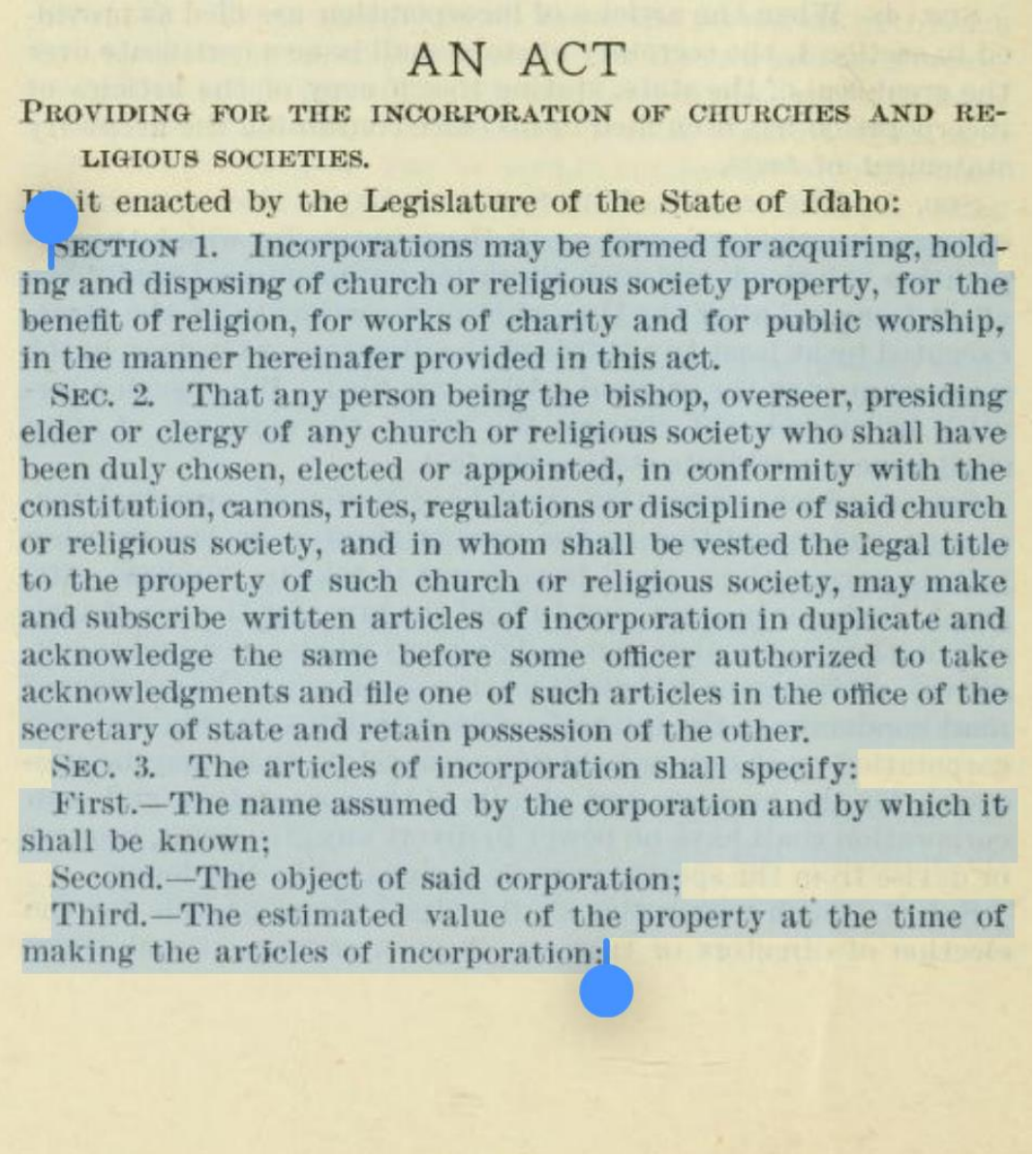

AN ACT

PROVIDING FOR THE INCORPORATION OF CHURCHES AND RELIGIOUS SOCIETIES.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. Incorporations may be formed for acquiring, holding and disposing of church or religious society property, for the benefit of religion, for works of charity and for public worship, in the manner hereinafer provided in this act.

SEC. 2. That any person being the bishop, overseer, presiding elder or clergy of any church or religious society who shall have been duly chosen, elected or appointed, in conformity with the constitution, canons, rites, regulations or discipline of said church or religious society, and in whom shall be vested the legal title to the property of such church or religious society, may make and subscribe written articles of incorporation in duplicate and acknowledge the same before some officer authorized to take acknowledgments and file one of such articles in the office of the secretary of state and retain possession of the other.

SEC. 3. The articles of incorporation shall specify:

First.—The name assumed by the corporation and by which it shall be known;

Second.—The object of said corporation;

Third.—The estimated value of the property at the time of making the articles of incorporation;

Churches have voluntarily subjected themselves to the Civil Law

[..Section 1. Incorporations MAY be formed for acquiring, holding and disposing of church or religious society property, for the benefit of religion, for works of charity and for public worship, in the manner hereinafer provided in this act.]

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Laws of Nature
Natural Law
Law of Nations

The law of war and peace (De jure belli ac pacis)
https://archive.org/details/lawofwarpeacedej00grot/page/n7/mode/2up
Introduction
Pg. Xx
[...Grotius found his data not in his alleged existing society of nations but in the society of the men, gods, and peoples presented by Homer, Plato, Thucydides, Polybius, Livy, Plutarch, Cicero, Caesar, and Tacitus. Only rarely does he mention anything as recent as Charlemagne. The bulk of his moral authority comes direct from the Greek and Roman philosophers, from the Old and New Testaments, and from the great Fathers of the Church. His law, when it is not derived from the Scriptures or from his own and others' speculations on the nature of man and society, is that of Justinian's Corpus Juris. For him, as for most European minds of his time, a golden age lay somewhere in the early civilization of Greece and Rome, the model for all legal construction was Roman Law, and the last word on morals was the word of God in the Old and New Testaments as interpreted, where necessary, by Tertullian, Ambrose, Augustine, and Jerome. ..]
Hugo Grotius, *"Hugo de Groot",* Huig de Groot
[Dutch humanist, diplomat, lawyer, theologian, jurist, statesman, poet and playwright..]
[...A major figure in the fields of philosophy, political theory and law during the 16th and 17th centuries] [...his writings laid the foundations for international law, based on natural law in its Protestant side..] https://en.wikipedia.org/wiki/Hugo_Grotius

The law of nations-The law of nations; or, Principles of the law of nature, applied to the conduct and affairs of nations and sovereigns

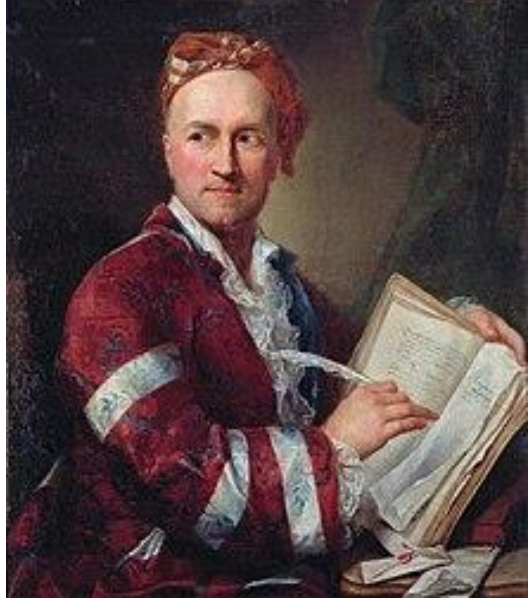
Emer De Vattel- Publishes 1758, Swiss-born jurist, diploma

Preface, Pg. vi

Grotius, by his very distinction, and by exclusively appropriating the name of " the law of nations" to those maxims which have been established by the common consent of mankind, seems to intimate that sovereigns in their transactions with each other cannot insist on the observance of any but those last-mentioned maxims,— reserving the internal law for the direction of their own consciences. If—setting out with the idea that political societies or nations live, with respect to each other, in a recireocal independence, in the state of nature, and that, as political bodies , they are subject to the natural law---Grotius had moreover considered that the law must be applied to these new subjects in a manner suitable to their nature,-- that judicous author would easily have discovered that the natural law of nations is a particular science; that it produces Hobbes in whose work we discover the hand of a master, notwithstading his paradoxes and detestable maxims,--Hobbes was, I believe the first who gave a distinction though imperfect idea of the law of nations.

He divides the law of nature into that of men and of states : and the latter is, according to him what we usually call the law of nations.

"The maxims", he adds "of each of these laws are precisely the same : but as states once established assume personal properties, that which is termed the natural law when we speak of duties of individuals, is called the law of nations when " applied to whole nations or states .”



Vattel

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The law of nations-The law of nations; or, Principles of the law of nature, applied to the conduct and affairs of nations and sovereigns

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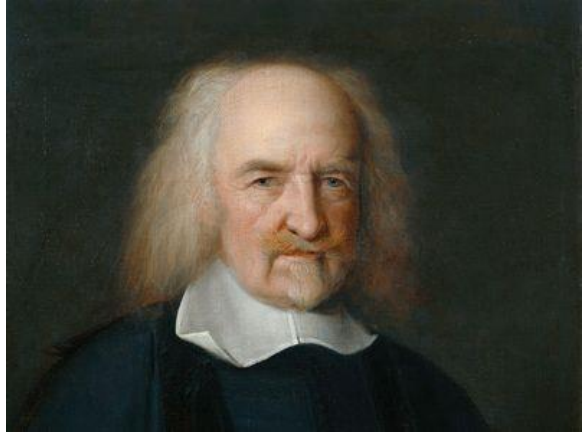
Preface, Pg. vi



Hobbes

This author has well observed, that the law of nations is the law of nature applied to states or nations. But we shall see in the course of this work, that he was mistaken in the idea that the law of nature does not suffer any necessary change in the application [see Fortesque ,--- an idea from which he concluded that the maxims of the law of nature and those of the law of nations are precisely the same. Puffendorf declares that he unreservedly subscribes to this opinion spoused by Hobbes. He has not therefore seperately treated of the law of nations but has every-where blended it with the law of nature properly so called. Barbeyrac, who performed the office of translator and commentator to Grotius and Puffendorf, has approached much nearer to the true idea of the law of nations. Though the work is in every body's hands.

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Barbeyrac, who performed the office of translator and commentator to Grotius and Puffendorf, has approached much nearer to the true idea of the law of nations.
Though the work is in every body's hands, I shall here, for the reader's convenience, transcribe one of that learned translator's notes on Grotius's Law of War and Peace
" I acknowledge," says he, that there are laws common to all nations, - things which all nations ought to practise towards each other: and if people choose to call these the law of nations, they may do so with great propriety. But setting aside the consideration that the consent of mankind is not the basis of the obligation by which we are bound to observe those laws, and that it cannot even possibly take place in this instance, - the principles and the rules of such a law are in fact the same as those of the law of nature, properly so called; the only difference consisting in the mode of their application, which may be somewhat Varried, on account of the difference that sometimes happens in the manner in which nations settle their affairs.

happens in the manner
It did not escape the notice of the author we have just quoted, that the rules and decisions of the law of nature cannot be purely and simply applied to sovereign states, and that they must necessarily undergo some modifications in order to accommodate them to the nature of the new subjects to which they are applied.
But it does not appear that he discovered the full extent of this idea, since he seems not to approve of the mode of treating the law of nations separately from the law of nature as relating to individuals. He only commends Budaeus's method, saying, " it was right
" in that author to point out , after each article of
" the law of nature, the application which may be

Jean-Jacques Burlamaqui

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made of it to nations in their mutual relations to each other, — so far at least as his plan permitted or required that he should do this ." Here Barbeyrac made one step at least in the right track : but it required more profound reflection and more extensive views in order to conceive the idea of a system of natural law of nations, which should claim the obedience of states and sovereigns, — to perceive the utility of such a work, and especially to be the first to execute it.

This glory was reserved for the baron de Wolf. That great philosopher saw that …][it was proper to form a distinct system of the law of nations...]But nations or sovereign states being moral person...][necessarily differ, in many respects, from the nature and essence of the physical individuals, or men, of whom they are composed.][...Thus, we see that the law of nations does not, in every particular, remain the same as the law of nature, regulating the actions of individuals. Why may it not, therefore, be separately treated of, as a law peculiar to nations?"

https://www.constitution.org/2-Authors/vattel/vattel-01.htm

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Barbeyrac

Christian Wolff

CHAP. III.

Of the Law of Nature *in General.*

I. SInce then it appears inconsistent with the Nature and the Condition of Man, that he should live entirely loose from all Law, and perform his Actions by a wild and wandering Impulse, without regard to any Standard or Measure; it follows, that we make enquiry into that most General and Universal Rule of Human Actions, to which every Man is oblig'd to conform, as he is a Reasonable Creature. To this Rule Custom hath given the Name of *Natural Law*, and we may call it likewise the Law *Universal* or *Perpetual*; the former, in regard that it binds the whole Body of Human Race, the latter, because it is not subject to change, which is the Disadvantage of *Positive* Laws. What this Law is, whence the Knowledge of it arises, what are the chief Marks and Tokens by which it is discover'd, what Matters are to be referr'd to that, and what to Positive Constitutions; are Points which require the more careful Examination, because if this Basis and Groundwork should be ill laid, whatever we afterwards build upon it, must fall of Course (a).

II. The *Roman* Lawyers defin'd the Law of Nature, to be *that Law which Nature teaches all Living Creatures* (1); which therefore is not peculiar to Man, but is apprehended and observ'd by other Animals. So that according to this Hypothesis, those things must be said to belong to the Law of Nature, which Brute Creatures either affect and pursue, or avoid and abhor: Whence it naturally follows, that there must be a Law common to Men and Beasts. Which Opinion it's likely might proceed from that famous old Notion about *the Soul of the World*, of which all other Souls were a kind of συνωσματα or Particles, being in themselves all of the same Nature, but exerting different Operations, according as they fell on different Bodies, and met with different Organs for the Conveyance of their Strength and Powers. Nearly allied to this Fancy was the Μετεμψυχωσις or Transmigration of Souls, according to which Men and Beasts were thought to differ only in their Corporeal Figure, having Souls altogether of the same Nature, and mutually lending to each other (b). But the General Content of Learned Men hath discarded this Common Law of Animate Beings: In as much as it is impossible to conceive how a Creature should be capable of Law, and at the same time incapable of Reason (c). And altho' there are several Actions of Men and Beasts very much alike, on the Performance of which the former are said to have fulfill'd the Law; yet in Strictness and in Reality, they are extremely different, since they are done by Brutes out of simple Inclination of Nature, but by Men out of Obligation, of which those other Creatures have no Sense. And therefore we must suppose Authors to speak figuratively, when they attribute to such inferior and dumb Animals, Justice, Fortitude, Pity, Gratitude or Chastity; only because they perceive in some of their Proceedings the Shadow and Semblance of these Vertues (d). For things which seem alike in their external Face and Appearance, are by no means the same, if they proceed from different internal Principles. As for *Grotius*'s Opinion (e), that some Acts of other Creatures are dispos'd in an extraordinary manner by an external *Reason* or Principle, as the Works of Bees and of Ants, and the Frugality which some seem to use about what they have got, for the Benefit of their Kindred and Off-spring; this is allowable only if we mean by it, that the Nature of these Creatures is in such a manner temper'd by the Divine Creator, as to be capable of producing such Actions; not that any outward Principle violently guides and steers them, as a Pilot doth a Vessel. Nor is it difficult to understand why they do not discover the same Cunning in other Matters equally obvious; if we suppose with the New Philosophers, that whatever *Form* Irrational Animals enjoy, arises purely from the Figure and Disposition of Material Particles, and from the Variety of their Move-

(a) 'Tis a good Rule of *Plato* (in *Cratyl.*) p. 399, Ed. *Francof.* *A Man ought to be very strict and accurate in examining the first Principle and Foundation of things, and no less copious and diligent in explaining them; in as much as those Points being once clearly settled, the whole Scheme of Doctrine regularly follows.* And so much the more ought this Rule to be observ'd in our present Subject, the more Truth there is in that Remark of *Lactantius* (l. 3. c. 7.) p. 224. *Ed.* Oxon. *Because in forming the Manners and framing the Model of Life, it is the highest and most fatal Danger to mistake; we ought to apply the stricter Diligence to the Study of our Duty. In this great Point there is no Allowance for Error or Disagreement, all ought to be of one Opinion, and to declare with a Common Mouth the same Doctrine: Since the least slip may overturn the Rule and Order of Living.* To the same purpose *Diogenes Apolloniat.* (in *Diog. Laert.* l. 9.) Segm. 57. *Every Discourse, in my Judgment, ought to take its rise from some clear and manifest Principle; and the Style first made use of, should be plain and grave.* (1) See *Dig.* B. I. t. 1. Of Justice and Law. See *Instit.* B. I. t. 2. f. 1. (b) Vid. *Virgil.* Æn. VI. v. 724, &c. *Ovid. Met.* l. XV. v. 75, &c. (c) *Hesiod.* Op. & Dier. l. 1. Τοῖς δὲ δίκην δόμεναι, &c.

This Law did *Jove* for *Human Race* ordain:
The Beasts, the Fishes, and the Feather'd Train
He left to Mutual Spoil and Mutual Prey,
But *Justice* gave to *Men.*

(d) Vid. *Selden.* de L. N. & G. Secund. *Hebr.* l. 1. c. 5. (e) Prolegom. de J. B. & P. & l. 1. *de Ver. Rel. Christiana.*

Pg. 95 Since then it appears inconsistent with the Nature and the Condition of Man, that he should live entirely loose from all Law, and perform his Actions by a wild and wandering Impulse, without regard to any Standard or Measure; it follows, that we make enquiry into that most General and Universal Rule of Human Actions, to which every Man is oblig'd to conform, as he is a Reasonable Creature. To this Rule Custom hath given the Name of Natural Law, and we may call it likewise the Law Universal or Perpetual ; the former, in regard that it binds the whole Body of Human Race, the latter, because it is not subject to change, which is the Disadvantage of Positive Laws. What this Law is, whence the Knowledge of it arises, what are the chief Marks and Tokens by which it is discover'd, what Matters are to be referr'd to that, and what to Positive Constitutions; are Points which require the more careful Examination, because if this Basis and Groundwork should be ill laid, whatever we afterwards build upon it, must fall of Course.

Puffendorf

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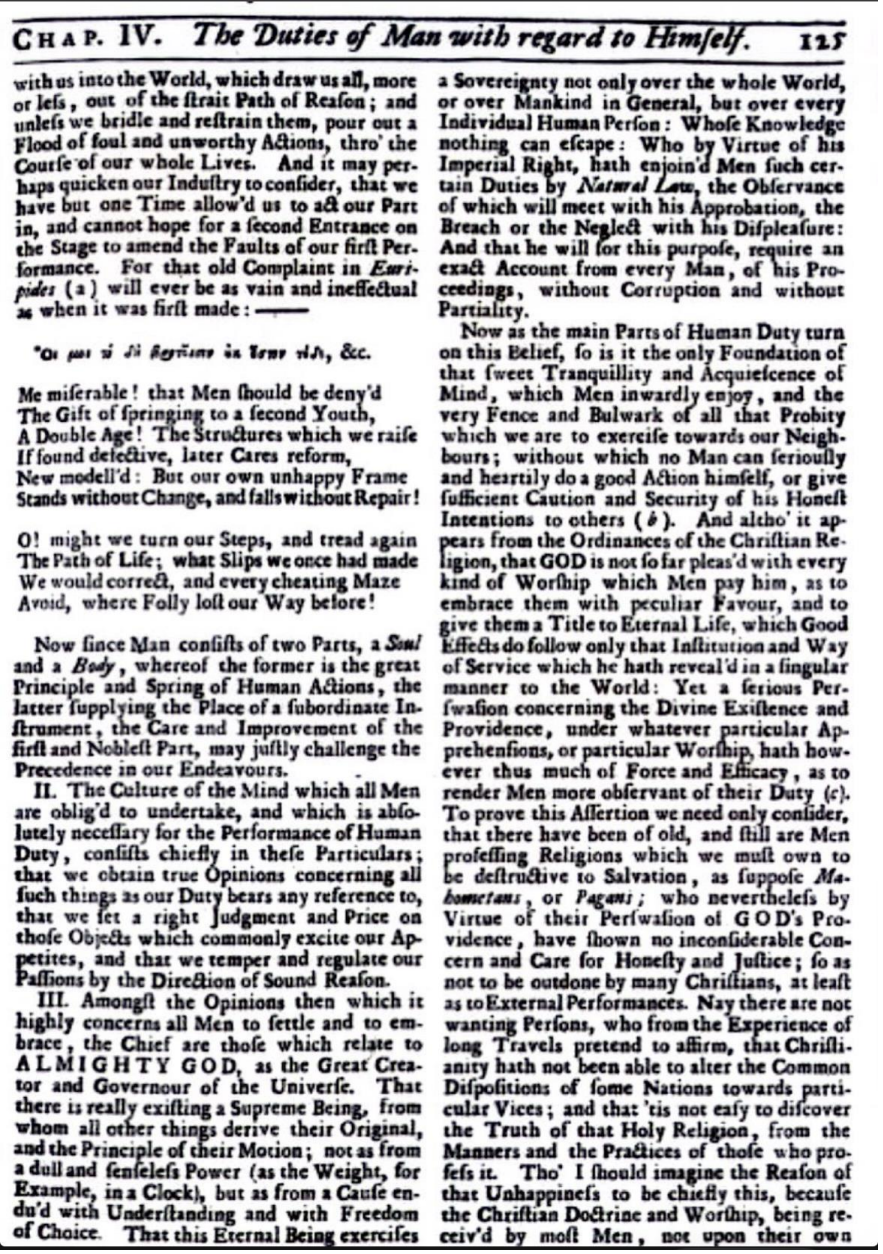

CHAP. IV. *The Duties of Man with regard to Himself.* 125

with us into the World, which draw us all, more or less, out of the strait Path of Reason; and unless we bridle and restrain them, pour out a Flood of foul and unworthy Actions, thro' the Course of our whole Lives. And it may perhaps quicken our Industry to consider, that we have but one Time allow'd us to act our Part in, and cannot hope for a second Entrance on the Stage to amend the Faults of our first Performance. For that old Complaint in *Euripides* (a) will ever be as vain and ineffectual as when it was first made: ——

Ὦ μοι τί δὴ βροτοῖσιν ἐν νόσοις νόσοι, &c.

Me miserable! that Men should be deny'd
The Gift of springing to a second Youth,
A Double Age! The Structures which we raise
If found defective, later Cares reform,
New model'd: But our own unhappy Frame
Stands without Change, and falls without Repair!

O! might we turn our Steps, and tread again
The Path of Life; what Slips we once had made
We would correct, and every cheating Maze
Avoid, where Folly lost our Way before!

Now since Man consists of two Parts, a *Soul* and a *Body*, whereof the former is the great Principle and Spring of Human Actions, the latter supplying the Place of a subordinate Instrument, the Care and Improvement of the first and Noblest Part, may justly challenge the Precedence in our Endeavours.

II. The Culture of the Mind which all Men are oblig'd to undertake, and which is absolutely necessary for the Performance of Human Duty, consists chiefly in these Particulars; that we obtain true Opinions concerning all such things as our Duty bears any reference to, that we set a right Judgment and Price on those Objects which commonly excite our Appetites, and that we temper and regulate our Passions by the Direction of Sound Reason.

III. Amongst the Opinions then which it highly concerns all Men to settle and to embrace, the Chief are those which relate to ALMIGHTY GOD, as the Great Creator and Governour of the Universe. That there is really existing a Supreme Being, from whom all other things derive their Original, and the Principle of their Motion; not as from a dull and senseless Power (as the Weight, for Example, in a Clock), but as from a Cause endu'd with Understanding and with Freedom of Choice. That this Eternal Being exercises a Sovereignty not only over the whole World, or over Mankind in General, but over every Individual Human Person: Whose Knowledge nothing can escape: Who by Virtue of his Imperial Right, hath enjoin'd Men such certain Duties by *Natural Law*, the Observance of which will meet with his Approbation, the Breach or the Neglect with his Displeasure: And that he will for this purpose, require an exact Account from every Man, of his Proceedings, without Corruption and without Partiality.

Now as the main Parts of Human Duty turn on this Belief, so is it the only Foundation of that sweet Tranquillity and Acquiescence of Mind, which Men inwardly enjoy, and the very Fence and Bulwark of all that Probity which we are to exercise towards our Neighbours; without which no Man can seriously and heartily do a good Action himself, or give sufficient Caution and Security of his Honest Intentions to others (b). And altho' it appears from the Ordinances of the Christian Religion, that GOD is not so far pleas'd with every kind of Worship which Men pay him, as to embrace them with peculiar Favour, and to give them a Title to Eternal Life, which Good Effects do follow only that Institution and Way of Service which he hath reveal'd in a singular manner to the World: Yet a serious Perswasion concerning the Divine Existence and Providence, under whatever particular Apprehensions, or particular Worship, hath however thus much of Force and Efficacy, as to render Men more observant of their Duty (c). To prove this Assertion we need only consider, that there have been of old, and still are Men professing Religions which we must own to be destructive to Salvation, as suppose *Mahometans*, or *Pagans*; who nevertheless by Virtue of their Perswasion of GOD's Providence, have shown no inconsiderable Concern and Care for Honesty and Justice; so as not to be outdone by many Christians, at least as to External Performances. Nay there are not wanting Persons, who from the Experience of long Travels pretend to affirm, that Christianity hath not been able to alter the Common Dispositions of some Nations towards particular Vices; and that 'tis not easy to discover the Truth of that Holy Religion, from the Manners and the Practices of those who profess it. Tho' I should imagine the Reason of that Unhappiness to be chiefly this, because the Christian Doctrine and Worship, being receiv'd by most Men, not upon their own

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https://archive.org/details/bim_eighteenth-century_of-the-law-of-nature-and_pufendorf-samuel-freih_1710/page/124/mode/2up?view=theater

***The Spirit of Laws* (Excerpts)**
By Charles de Secondat, Baron de Montesquieu
1748
[Montesquieu, Baron de. *The Spirit of Laws*. Translated by Thomas Nugent

Montesquieu

[...These two different kinds of states give rise to human laws. Considered as inhabitants of so great a planet, which necessarily contains a variety of nations, they have laws relating to their mutual intercourse, which is what we call the law of nations. As members of a society that must be properly supported, they have laws relating to the governors and the governed, and this we distinguish by the name of politic law. They have also another sort of law, as they stand in relation to each other; by which is understood the civil law.

The law of nations is naturally founded on this principle, that different nations ought in time of peace to do one another all the good they can, and in time of war as little injury as possible, without prejudicing their real interests.

The object of war is victory; that of victory is conquest; and that of conquest preservation. From this and the preceding principle all those rules are derived which constitute the law of nations.

All countries have a law of nations, not excepting the Iroquois themselves, though they devour their prisoners: for they send and receive ambassadors, and understand the rights of war and peace. The mischief is that their law of nations is not founded on true principles.

Besides the law of nations relating to all societies, there is a polity or civil constitution for each particularly considered. No society can subsist without a form of government. "The united strength of individuals," as Gravina[4] well observes, "constitutes what we call the body politic."..]

[..Law in general is human reason, inasmuch as it governs all the inhabitants of the earth: the political and civil laws of each nation ought to be only the particular cases in which human reason is applied.

They should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another.

They should be in relation to the nature and principle of each government; whether they form it, as may be said of politic laws; or whether they support it, as in the case of civil institutions.

They should be in relation to the climate of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds: they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs. In fine, they have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered.

https://archive.org/details/spiritlaws00secogoog

Article 1, Section 8, Clause 10
Document 5
James Wilson
Of the Law of Nations- 1791

[...On all occasions, let us beware of being misled by names. Though the law, which I am now to consider, receives a new appellation; it retains, unimpaired, its qualities and its power. The law of nations, as well as the law of nature, is of obligation indispensable: the law of nations, as well as the law of nature, is of origin divine.

The opinions of many concerning the law of nations have been very vague and unsatisfactory; and if such have been the opinions, we have little reason to be surprised, that the conduct of nations has too often been diametrically opposite to the law, by which it ought to have been regulated. In the judgment of some writers, it would seem, for instance, that neither the state which commences an unjust war, nor the chief who conducts it, derogates from the general sanctity of their respective characters. An ardent love of their country they seem to have thought a passion too heroick, to be restrained within the narrow limits of systematick morality; and those have been too often considered as the greatest patriots, who have contributed most to gratify the publick passion for conquest and power. States, as well as monarchs, have too frequently been blinded by ambition. Of this there is scarcely a page in ancient or in modern history, relating to national contentions, but will furnish the most glaring proofs. The melancholy truth is, that the law of nations, though founded on the most solid principles of natural obligation, has been but imperfectly viewed in theory, and has been too much disregarded in practice.]

[...I admit that there are laws of nations--perhaps it is to be wished that they were designated by an appropriate name; for names, after all, will have their influence on operations--I freely admit that there are laws of nations, which are founded altogether upon consent. National treaties are laws of nations, obligatory solely by consent. The customs of nations become laws solely by consent. Both kinds are certainly voluntary. But the municipal laws of a state are not more different from the law of nature, than those voluntary laws of nations are, in their source and power, different from the law of nations, properly so called. Indeed, those voluntary laws of nations are as much under the control of the law of nations, properly so called, as municipal laws are under the control of the law of nature. The law of nations, properly so called, is the law of nature applied to states and sovereigns. The law of nations, properly so called, is the law of states and sovereigns, obligatory upon them in the same manner, and for the same reasons, as the law of nature is obligatory upon individuals. Universal, indispensable, and unchangeable is the obligation of both....]

Article I, Section 8, Clause 10: [The Congress shall have Power . . .] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations

Roman Civil Law of Nations, International Law

https://archive.org/details/iurisetjudiciife12zouc/page/n27/mode/2up

An explanation of fecial law and judgment, that is, of law between nations, and of the questions concerning the same: in which those things which relate to peace and war between different princes, or peoples, are presented by the chief historical-law-experts

Richard Zouch

appointed Regius Professor of Civil Law at Oxford in 1620, English judge and a Member of Parliament from 1621 to 1624. In virtue of the last two he has the distinction of being one of the earliest systematic writers on international law. According to Thomas Erskine Holland writing in the *Dictionary of National Biography*, Jeremy Bentham's coinage "international law" derives from the phrase *jus inter gentes* implied by Zouch's 1650 choice of title. Holland also identifies both Zouch and Arthur Duck as pupils of distinction of the civilian John Budden, in the Oxford tradition founded by Alberico Gentili.

[Gentili was a Regius Professor of Civil Law at the University of Oxford for 21 years.]

THE LAW OF NATIONS*

[...wherein is the cause of dispute in the long discussions that have ranged round the meaning and Significance of the Jus Gentium; for it is a mistranslation to give law as the English equivalent of the Latin jus.

The English translators of the Summa are not always consistent in their equivalents for the phrase, for in 1a.za, q. 95, art. 4, in the answer to the first objection (p. 62) the expression 'law of nations' is given, while in 2a.2ae, q. 57, art. 3 (p. 108), it is this last that is undoubtedly the truer rendering 'the right of nations.'

The origin of the phrase, however, will help us to understand what exactly jus gentium signifies and perhaps solve it. It seems to be beyond dispute that the term began to be in use in the latter days of the Republic of Rome when the city had begun its conquests of Italy and was holding under its sway peoples for whom it did not legislate, and yet whose quarrels it had to adjust. A special judge had to be given them, the Prator Peregrinus, whose function it was to settle their disputes, as the Prator Urbanus settled those of the citizens of Rome. It was found in practice that these foreigners had very many institutions in common, so that gradually a code was evolved which was based upon no positive legislation of any particular city or tribe, but was the mere putting into order of what was found already to have obtained amongst these non-Roman subject peoples. Side by side, therefore, two codes became enshrined in the law books of Rome, the Roman Law and the Law of the Peoples, the first originating of course gradually and deliberately in acts of assemblies and of tribunes, the second merely discovered, the one determined by …]

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*THE LAW OF NATIONS**

TO start with this title is to suggest perhaps wherein lies the cause of dispute in the long discussions that have ranged round the meaning and significance of the *Jus Gentium;* for it is a mistranslation to give *law* as the English equivalent of the Latin *jus*. The English translators of the *Summa* are not always consistent in their equivalents for the phrase, for in *1a.2æ*, q. 95, art. 4, in the answer to the first objection (p. 62) the expression 'law of nations' is given, while in *2a.2æ*, q. 57, art. 3 (p. 108), it is 'the right of nations.' It is this last that is undoubtedly the truer rendering.

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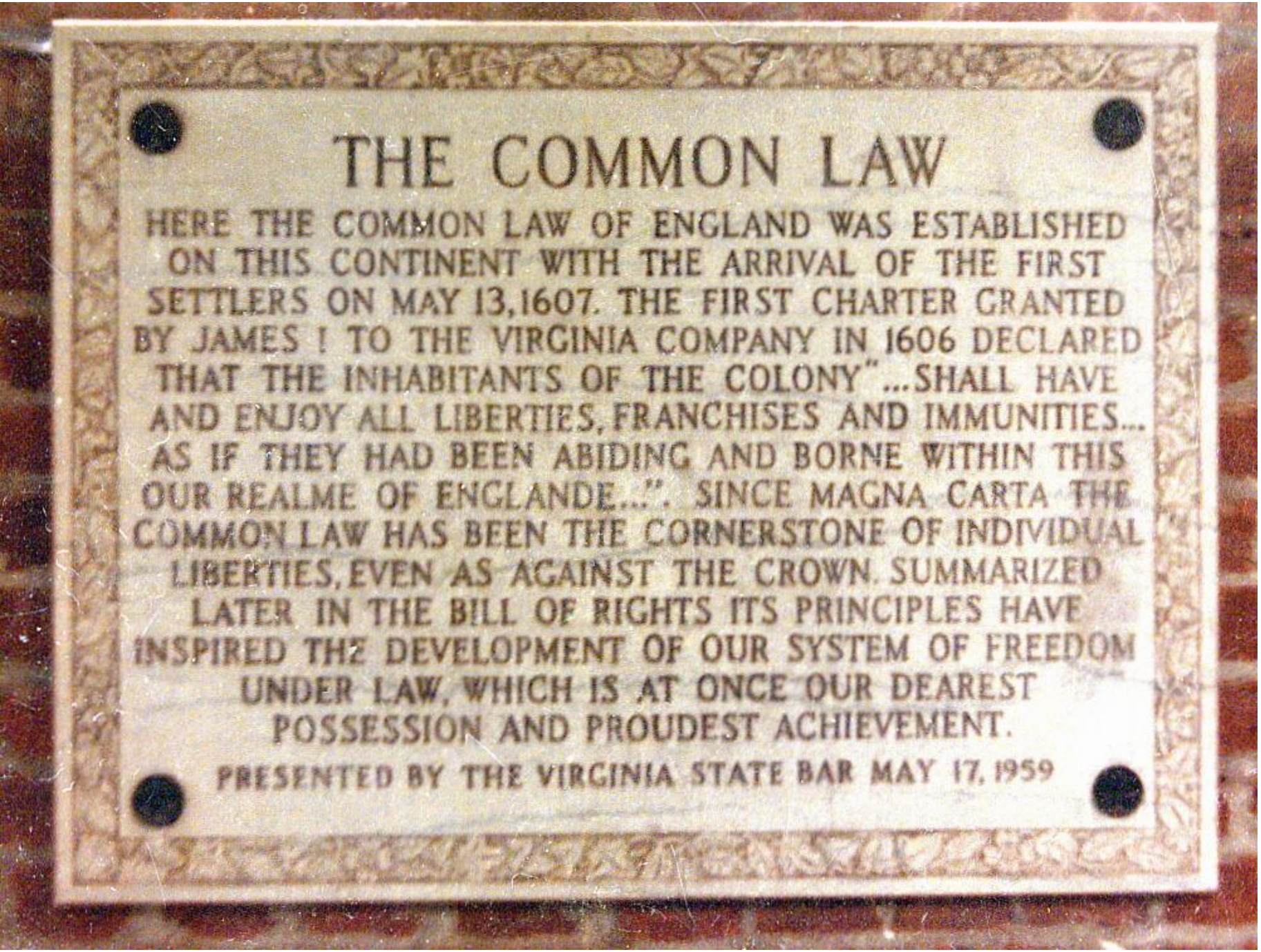
* This is the substance of a paper read at the Reading Congress recently.

https://archive.org/details/bim_eighteenth-century_an-institute-of-the-law-_erskine-john_1793_1/page/n27/mode/2up?view=theater&q=common

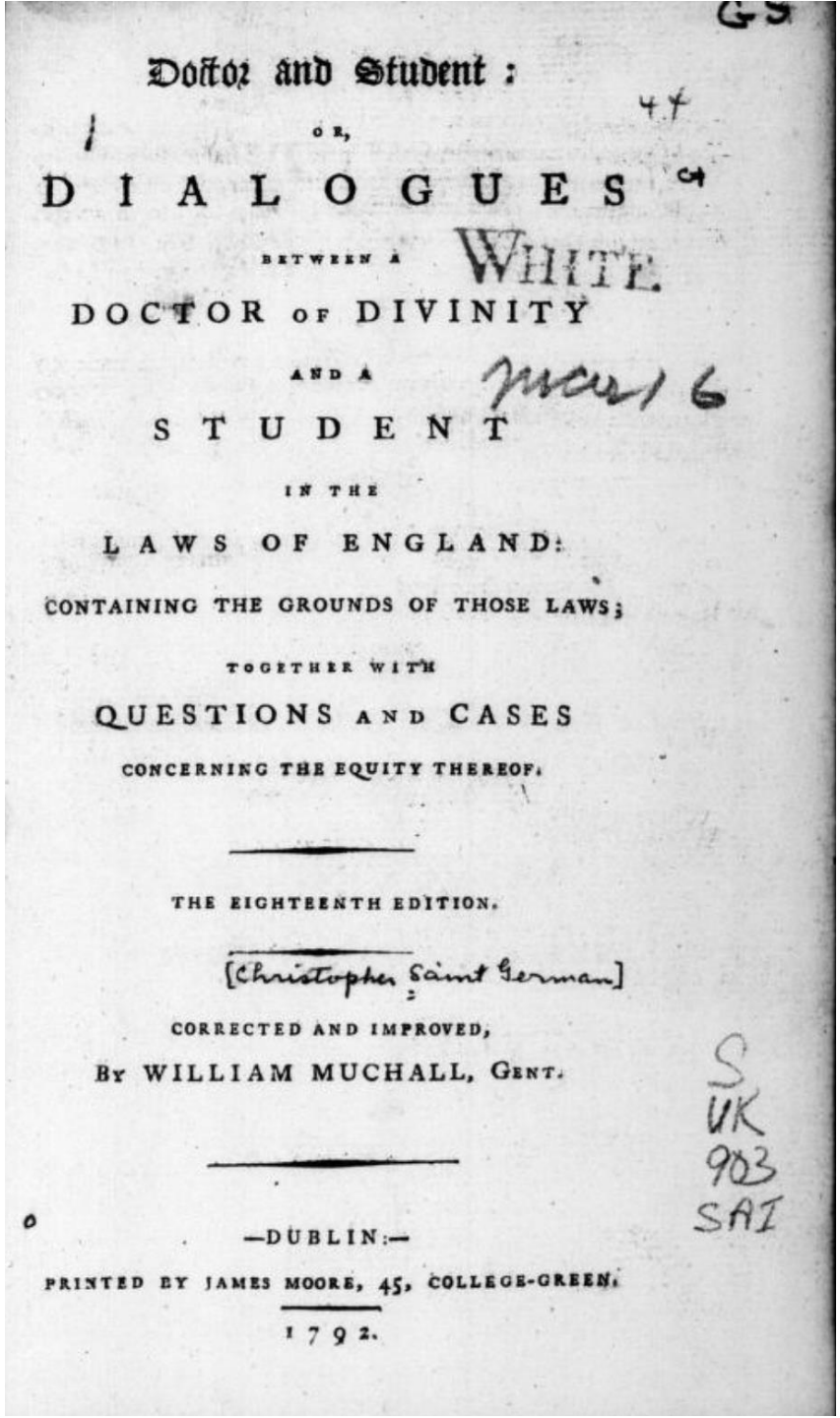
The Roman definition of "law of nations" comes from the Latin jus gentium, which was a concept invented by the Romans to govern the relationships between foreigners and Roman citizens.
https://www.google.com/search?q=laws+of+nations+vs+law+of+nations

Bracton comparing Roman and English Law
Pg.38
https://archive.org/details/bractononlawscus0001brac
Jus Gentium
https://archive.org/details/bractononlawscus0000brac_w9a2/page/n33/mode/2up

Common law Termes


THE COMMON LAW
HERE THE COMMON LAW OF ENGLAND WAS ESTABLISHED ON THIS CONTINENT WITH THE ARRIVAL OF THE FIRST SETTLERS ON MAY 13, 1607. THE FIRST CHARTER GRANTED BY JAMES I TO THE VIRGINIA COMPANY IN 1606 DECLARED THAT THE INHABITANTS OF THE COLONY"...SHALL HAVE AND ENJOY ALL LIBERTIES, FRANCHISES AND IMMUNITIES... AS IF THEY HAD BEEN ABIDING AND BORNE WITHIN THIS OUR REALME OF ENGLANDE...". SINCE MAGNA CARTA THE COMMON LAW HAS BEEN THE CORNERSTONE OF INDIVIDUAL LIBERTIES, EVEN AS AGAINST THE CROWN. SUMMARIZED LATER IN THE BILL OF RIGHTS ITS PRINCIPLES HAVE INSPIRED THE DEVELOPMENT OF OUR SYSTEM OF FREEDOM UNDER LAW, WHICH IS AT ONCE OUR DEAREST POSSESSION AND PROUDEST ACHIEVEMENT.
PRESENTED BY THE VIRGINIA STATE BAR MAY 17, 1959

THE Common law is taken three manner of ways.
First, it is taken as the law of this realm of England, dis-severed from all other laws.
And under this manner taken it is oftentimes argued in the laws of England, what matters **ought of right** to be determined **by the Common law**,
and what by the admiral's court, or by the spiritual court:
“ and also if an obligation bear date out of the realm, as in Spain, France, or such other,
it is said in the law, and truth it is, that they be not pleadable at the Common law.
Secondly, the Common law is taken as the king's courts, of his Bench, or of the Common Place: & ought not to be determined in that court, but at the Common law, that is to say, in the king's courts, &c.
Thirdly, by the Common law is understood such things as were law before statute made in that point that is in question; so that that point was holden for law by the general or particular customs and maxims of the realm, or by the law of reason, and the law of God, no other law added to them by statute, .nor otherwise...]
Dialogues between a doctor of divinity and a student in the laws of England, originally published in Latin, in two separate dialogues. It was written anonymously. The first dialogue was first published in Latin in 1523 by John Rastell
https://archive.org/details/bim_eighteenth-century_doctor-and-student-or-_saint-german-christophe_1792/mode/2up?view=theater


Doctor and Student:
OR,
DIALOGUES
BETWEEN A
DOCTOR OF DIVINITY
AND A
STUDENT
IN THE
LAWS OF ENGLAND:
CONTAINING THE GROUNDS OF THOSE LAWS;
TOGETHER WITH
QUESTIONS AND CASES
CONCERNING THE EQUITY THEREOF.
THE EIGHTEENTH EDITION.
[Christopher Saint German]
CORRECTED AND IMPROVED,
BY WILLIAM MUCHALL, GENT.
—DUBLIN:—
PRINTED BY JAMES MOORE, 45, COLLEGE-GREEN.
1792.

Common law origins -Notes upon Fortescue

But the diverse opinions of interpreters proceeding from the weakness of mans reason, and the **several conveniencies of diverse States, have made those limitations, which the law of Nature hath suffered, very different**. And hence is it, that **those customs which have come all out of one fountain, Nature, thus vary from and cross one another in several Commonwealths.**

Had the Britons received the ten or twelve Tables from Greece (which in Rome was, as **Livy** [historian **Titus Livius]** says, "in immenso aliarum Super alias acervatarum legum cumulo, fons omnis publici privatique jaris"

[in the immense heap of other laws accumulated upon others, the source of all public and private [same verbiage in statutes] springs]

But the diverse opinions of interpreters proceeding from the weakness of mans reason, and the several conveniencies of diverse States, have made those limitations, which the law of Nature hath suffered, very different.

And hence is it, that those customs which have come all out of one fountain, Nature, thus vary from
and cross one another in several Commonwealths.

Clearly the interpretations and additions which by this time would have been put to them here,
must not be thought on as if they would have fell out like the body of the Roman Civil law.

Diverse Nations, as diverse men have their diverse collections and inferences, and so make their diverse laws to grow to what they are, out of one and the same **root**. Infinite laws we have now that were not thought on D. years since. [D. means Died]

Then were many that D. years before [that] had no being, and less time forward always produced diverse new; the beginning of all here being in the first peopling of the land , when men by nature being civil creatures grew to plant a common society.

This rationally considered might end that obvious question of those, which would say something against the laws of England if they could.

'Tis their trivial demand, **When and how began your common laws ?**

Questionless its fittest answered by affirming,

when and in like kind as the laws of all other States, that is, when there was first a State in that land, which the common law now governs : then were natural laws limited for the conveniency of civil[ized] society here, and those limitatıons have been from thence, increased, altered, interpreted, and brought to what now they are; although perhaps

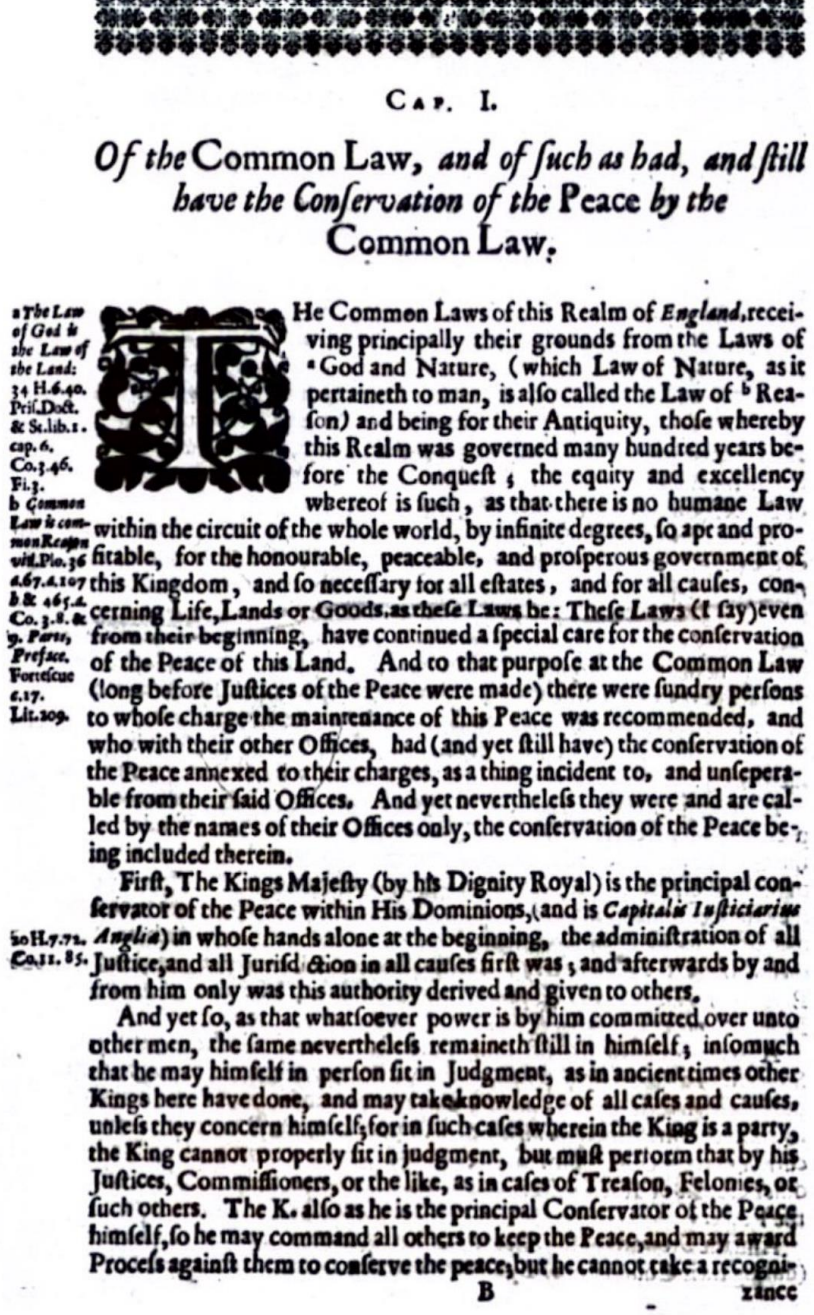
(saving the merely immutable part of nature) now, in regard .

De laudibus legum Angliae; … believed to have been written around 1470

Sir John Fortesque

https://archive.org/details/bim_early-english-books-1475-1640_de-laudibus-legum-angli_fortescue-sir-john_1616/page/n303/mode/2up?q=ley

https://archive.org/details/bim_early-english-books-1641-1700_de-laudibus-legum-anglia_fortescue-sir-john_1660



CAP. I.

Of the Common Law, *and of ſuch as had, and ſtill have the Conſervation of the* Peace *by the* Common Law.

THE Common Laws of this Realm of *England*, receiving principally their grounds from the Laws of [a] God and Nature, (which Law of Nature, as it pertaineth to man, is alſo called the Law of [b] Reaſon) and being for their Antiquity, thoſe whereby this Realm was governed many hundred years before the Conqueſt; the equity and excellency whereof is ſuch, as that there is no humane Law within the circuit of the whole world, by infinite degrees, ſo apt and profitable, for the honourable, peaceable, and proſperous government of this Kingdom, and ſo neceſſary for all eſtates, and for all cauſes, concerning Life, Lands or Goods as theſe Laws be: Theſe Laws (I ſay) even from their beginning, have continued a ſpecial care for the conſervation of the Peace of this Land. And to that purpoſe at the Common Law (long before Juſtices of the Peace were made) there were ſundry perſons to whoſe charge the maintenance of this Peace was recommended, and who with their other Offices, had (and yet ſtill have) the conſervation of the Peace annexed to their charges, as a thing incident to, and unſeperable from their ſaid Offices. And yet nevertheleſs they were and are called by the names of their Offices only, the conſervation of the Peace being included therein.

First, The Kings Majeſty (by his Dignity Royal) is the principal conſervator of the Peace within His Dominions, (and is *Capitalis Juſticiarius Angliæ*) in whoſe hands alone at the beginning, the adminiſtration of all Juſtice, and all Juriſdiction in all cauſes firſt was; and afterwards by and from him only was this authority derived and given to others.

And yet ſo, as that whatſoever power is by him committed over unto other men, the ſame nevertheleſs remaineth ſtill in himſelf; inſomuch that he may himſelf in perſon ſit in Judgment, as in ancient times other Kings here have done, and may take knowledge of all caſes and cauſes, unleſs they concern himſelf; for in ſuch caſes wherein the King is a party, the King cannot properly ſit in judgment, but muſt perform that by his Juſtices, Commiſſioners, or the like, as in caſes of Treaſon, Felonies, or ſuch others. The K. alſo as he is the principal Conſervator of the Peace himſelf, ſo he may command all others to keep the Peace, and may award Proceſs againſt them to conſerve the peace; but he cannot take a recogni-

B zance

[a] The Law of God is the Law of the Land: 34 H. 6. 40. Prif. Doct. & St. lib. 1. cap. 6. Co. 3. 46. Fi. 3.

[b] Common Law is common Reaſon. vid. Plo. 36 a. 67. a. 107 b & 465. a. Co. 3. 8. & 9. Parts, Preface. Fortiſcue c. 17. Lit. 209.

20 H. 7. 12. Co. 11. 85.

The Common Law of this Realm of England, receiving principally their grounds from the Laws of God and Nature, (Which Law of Nature, as it pertaineth to man, is also called the Law of Reason) and being for their Antiquity, those whereby this Realm was governed many hundred years before the Conquest...] [… there is no humane Law within the circuit of the whole world, by infinite degrees, so apt and profitable, for the honourable, peaceable, and prosperous government of the Kingdom, and so necessary for all the estates. and for all causes, concerning Life, Lands or Goods as these Laws be...][….: These Laws (i say) even from their beginning, have continued a special care for the conservation of the Peace of this Land.

Michael Dalton, 1661

https://archive.org/details/bim_early-english-books-1641-1700_the-countrey-justice-_dalton-michael_1661/mode/1up

Expositiones terminorum legum Angliae ('Explanation of legal terms used in England') (1527) is a legal glossary compiled by John Rastell.

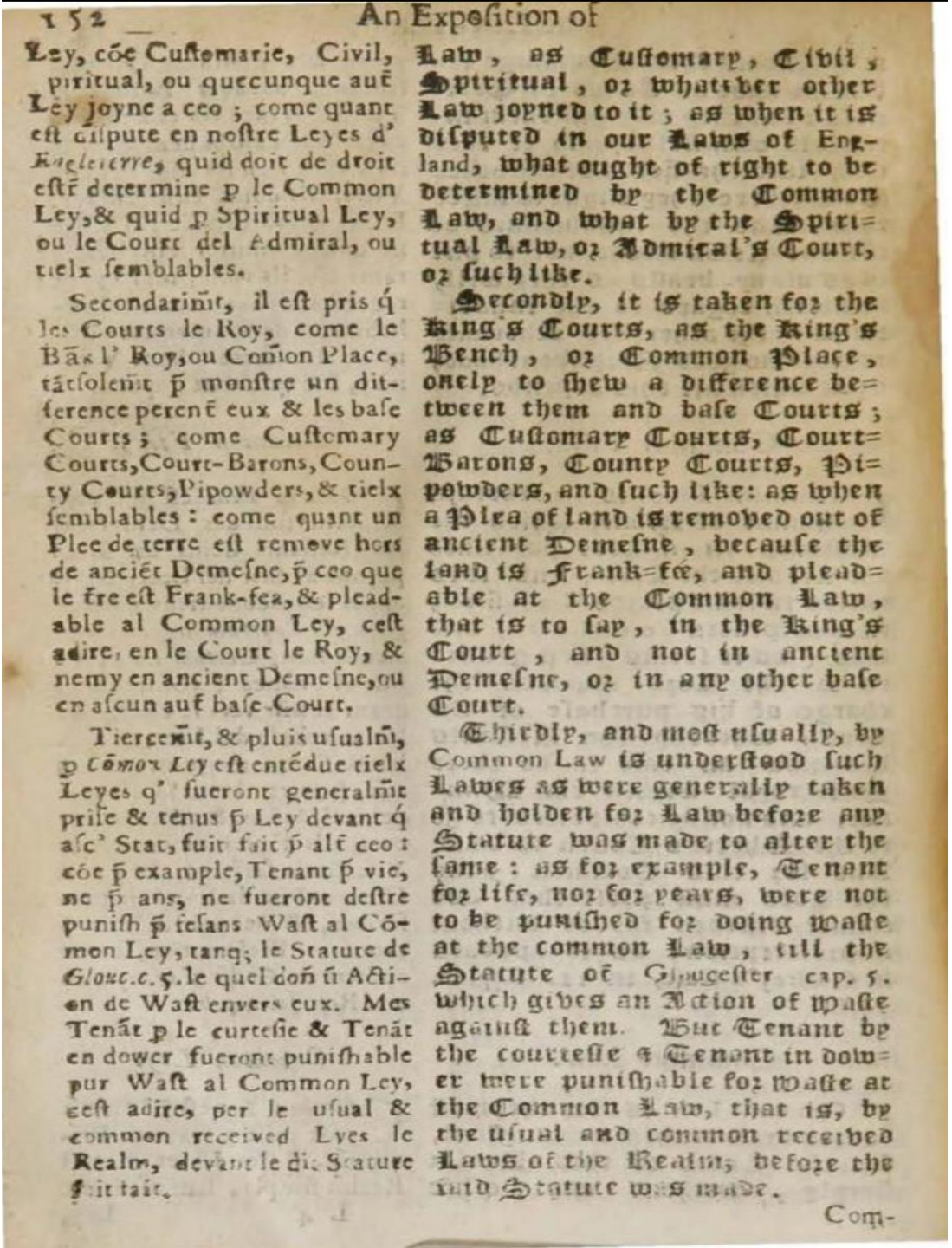
Although the title is in Latin, the work was written in Law-French.]
[...it was translated by his son, William Rastell, into English and published in 1563 as:

An Exposition of Certaine Difficult and Obscure Wordes and Termes of the Lawes of This Realme.

Many editions followed through 1618.
After 1620, the work was published and known as *Les Termes de la Ley*, and it was also often reprinted under that title.

https://en.wikipedia.org/wiki/Termes_de_la_Ley
https://archive.org/details/termesdelale_rast_1671_00/page/120/mode/2up
https://archive.org/search?query=creator%3A%22Rastell%2C+John%2C+-1536%22

LES LES &
TERMES DE LA LEY:
OR
Certaine difficult and ob-
cure Words and Termes of the Common
Lawes and Statutes of this Realme now in vſe
expounded and explained.
Newly imprinted, and much in-
larged and augmented.
With a new Addition of
aboue two hundred and fifty words.
HOR. Multa renaſcentur quæ jam cecidere, cadentque
Quæ nunc ſunt in honore vocabula, ſi volet vſus.
LONDON,
Printed by the Aſſignes of Iohn More
Eſquire. 1636.



152 An Exposition of

Ley, cõe Customarie, Civil, piritual, ou quecunque auẽ Ley joyne a ceo ; come quant eſt dispute en noſtre Leyes d' *Engleterre*, quid doit de droit eſtr̃ determine p̃ le Common Ley, & quid p̃ Spiritual Ley, ou le Court del Admiral, ou tielx ſemblables.

Secondarim̃t, il eſt pris q̃ les Courts le Roy, come le Bãs l' Roy, ou Comon Place, tãſolem̃t p̃ monſtre un difference perem̃ eux & les baſe Courts ; come Cuſtomary Courts, Court-Barons, County Courts, Pipowders, & tielx ſemblables : come quant un Plee de terre eſt remove hors de anciẽt Demeſne, p̃ ceo que le fre eſt Frank-fea, & pleadable al Common Ley, ceſt adire, en le Court le Roy, & nemy en ancient Demeſne, ou en aſcun auẽ baſe Court.

Tiercem̃t, & pluis uſualm̃t, p̃ *cõmon Ley* eſt entẽdue tielx Leyes q' fueront generalm̃t priſe & tenus p̃ Ley devant q̃ aſc' Stat, fuit fait p̃ alt̃ ceo : cõe p̃ example, Tenant p̃ vie, ne p̃ ans, ne fueront deſtre puniſh p̃ teſans Waſt al Cõmon Ley, tanq; le Statute de *Glouc. c.* 5. le quel doñ ũ Action de Waſt envers eux. Mes Tenãt p̃ le curteſie & Tenãt en dower fueront puniſhable pur Waſt al Common Ley, ceſt adire, per le uſual & common received Lyes le Realm, devant le dit Statute fuit fait.

Law, as Cuſtomary, Civil, Spiritual, or whatſoever other Law joyned to it ; as when it is diſputed in our Laws of England, what ought of right to be determined by the Common Law, and what by the Spiritual Law, or Admiral's Court, or ſuch like.

Secondly, it is taken for the King's Courts, as the King's Bench, or Common Place, onely to ſhew a difference between them and baſe Courts ; as Cuſtomary Courts, Court-Barons, County Courts, Pipowders, and ſuch like: as when a Plea of land is removed out of ancient Demeſne, becauſe the land is Frank-fee, and pleadable at the Common Law, that is to ſay, in the King's Court, and not in ancient Demeſne, or in any other baſe Court.

Thirdly, and moſt uſually, by Common Law is underſtood ſuch Lawes as were generally taken and holden for Law before any Statute was made to alter the ſame : as for example, Tenant for life, nor for years, were not to be puniſhed for doing waſte at the common Law, till the Statute of Gloucester cap. 5. which gives an Action of waſte againſt them. But Tenant by the courteſie & Tenant in dower were puniſhable for waſte at the Common Law, that is, by the uſual and common received Laws of the Realm, before the ſaid Statute was made.

Com-

Common Ley is for, the most part taken 3 ways;
First for the Lawes of this realme, without the Lawes of the Realme amply, without any other [realme], as Customary Law, Civil Law, Spiritual Law,
or whatsoever the Law joined to it;
as when it is disputed in our Lawes of England,
what ought of right to be determined by the Common Law,
and what by the Spiritual Law, or Admiralls Court or such like.
Secondly it is taken from the Kings Courts,
as the kings bench, or Common Place only to shew a difference between them and base courts as Customarie Courts, Court Barons, County Courts, Pipowders, and such like; as when a Plea of land is removed out of ancient demesne, because the land is fraken-fee and pleadgable at the Common Law, that is to say, in the King's Court, and not in any other base court. ...]
Thirdly, and most usually by the Common Law is understood such Lawes as were generally taken and helden for Law, before any Statute was made to alter the same...]

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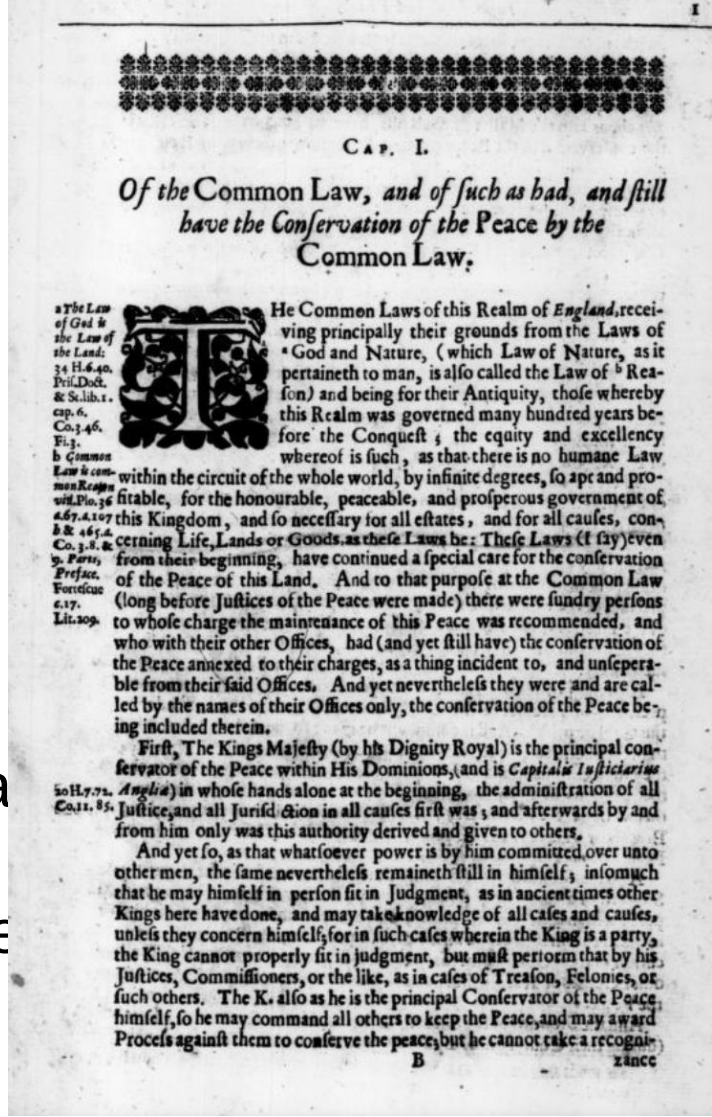
1. Common Law as the primary legal system: It refers to the laws of the realm, excluding other forms of law such as Customary Law, Civil Law, or Spiritual Law. This interpretation of common law was used to determine which matters should be decided by Common Law courts versus other specialized courts like Spiritual Courts, (marriages etc.) or Admiralty Courts

2. Common Law as the King's Courts: This usage distinguishes the higher royal courts (King's Bench and Common Pleas) from lower "base courts" such as customary courts, court barons, county courts, and courts of piepowders. For example, when a land dispute was moved from a manorial court to a royal court, it was said to become "pleadable at Common Law"

3. Common Law as pre-statutory law: This most common usage refers to the body of law that existed and was generally accepted before the enactment of statutes that attempted to modify it. X

The Common Law of this Realm of England, receiving principally their grounds from the Laws of God and Nature, (Which Law of Nature, as it pertaineth to man, is also called the Law of Reason) and being for their Antiquity, those whereby this Realm was governed many hundred years before the Conquest. the equity and excellency whereof is such, and that there is no humane Law within the circuit of the whole world, by infinite degrees, so apt and profitable, for the honourable, peaceable, and prosperous government of the Kingdom, and so necessary for all the estates. and for all causes, concerning Life, Lands or Goods as these Laws be: These Laws (i say) even from their beginning, have continued a special care for the conservation of the Peace of this Land. And to that purpose at the Common Law (long before Justices of the Peace were made) there were sundry persons to whose charge the maintenenace of this Peace was recommended, and who with their Offices, had (and yet still have) the conservation of the Peace annexed to their charges, as a thing incident to, and unseperated from their said Offices.



CAP. I.

Of the Common Law, *and of such as had, and still have the Conservation of the* Peace *by the* Common Law.

THE Common Laws of this Realm of *England*, receiving principally their grounds from the Laws of [a] God and Nature, (which Law of Nature, as it pertaineth to man, is also called the Law of [b] Reason) and being for their Antiquity, those whereby this Realm was governed many hundred years before the Conquest; the equity and excellency whereof is such, as that there is no humane Law within the circuit of the whole world, by infinite degrees, so apt and profitable, for the honourable, peaceable, and prosperous government of this Kingdom, and so necessary for all estates, and for all causes, concerning Life, Lands or Goods, as these Laws be: These Laws (I say) even from their beginning, have continued a special care for the conservation of the Peace of this Land. And to that purpose at the Common Law (long before Justices of the Peace were made) there were sundry persons to whose charge the maintenance of this Peace was recommended, and who with their other Offices, had (and yet still have) the conservation of the Peace annexed to their charges, as a thing incident to, and unseperable from their said Offices. And yet nevertheless they were and are called by the names of their Offices only, the conservation of the Peace being included therein.

First, The Kings Majesty (by his Dignity Royal) is the principal conservator of the Peace within His Dominions, (and is *Capitalis Justiciarius Anglia*) in whose hands alone at the beginning, the administration of all Justice, and all Jurisdiction in all causes first was; and afterwards by and from him only was this authority derived and given to others.

And yet so, as that whatsoever power is by him committed over unto other men, the same nevertheless remaineth still in himself; insomuch that he may himself in person sit in Judgment, as in ancient times other Kings here have done, and may take knowledge of all cases and causes, unless they concern himself; for in such cases wherein the King is a party, the King cannot properly sit in judgment, but must perform that by his Justices, Commissioners, or the like, as in cases of Treason, Felonies, or such others. The K. also as he is the principal Conservator of the Peace himself, so he may command all others to keep the Peace, and may award Process against them to conserve the peace; but he cannot take a recognizance

B

[a] *The Law of God & the Law of the Land:* 34 H. 6. 40. Prif. Doct. & Stud. l. 1. cap. 6. Co. 3. 46. Fi. 3.

[b] *Common Law & common Reason:* 18. Pla. 36. 467. a. 107. b & 465. a. Co. 3. 8. & 9. *Pars, Preface.* Fortescue c. 17. Lit. 209.

https://archive.org/details/bim_early-english-books-1641-1700_the-countrey-justice-_dalton-michael_1661

Reports of cases argued and adjudged in the Supreme Court of Pennsylvania-
Sept. 1829

Principles Regarding Spiritual Courts, Things not Actionable in Common Law Courts

[…GIBSON, C. J. — If there is any rule established by universal assent, it is that words which impute an offence against morality, are not actionable unless the offence be indictable, or induce some legal disability. No one will pretend that perjury can be assigned in an extra-judicial oath ; and to assert that every oath is judicial in the technical sense of the word, which it may be lawful and proper to administer, would ascribe to tribunals merely spiritual the ordinary attributes of temporal authority : a connection which no friend to the purity of religion would wish to see established. From time immemorial Christians of every denomination have doubtless had their ecclesiastical courts ; and to these is allowed full and free power to adjudicate on matters submitted to them. But when the civil magistrate is called in to punish for a disregard of the sanctions which they impose, it becomes a question whether he can interpose, without perverting his power from its legitimate objects. Christianity has been indefinitely said to be a part of the law of the land. The law undoubtedly avails itself of the obligations of Christianity as instruments to accomplish the purposes of justice. But judicial oaths are not founded exclusively on the belief of the Christian's revelation, a Jew or a Gen too being allowed to swear in the form prescribed by his faith. Christianity is indeed recognised as the predominant religion of the country, and for that reason, are not only its institutions, but the feelings of its professors, guarded against insult from reviling or scoffing at its doctrines ; so far it is the subject of special favor. But further the law does not protect it. Happily, it neither needs nor endures the patronage »f temporal authority, from contact with which it is proved by all experience, to contract defilement. But perjury is punishable in the temporal courts, not for its moral guilt, but its consequences to the public at large, in obstructing the administration of distributive justice. Its consequences, however, do not affect the public at large, where it has been committed in an ecclesiastical court, inasmuch as they consist in the obstruction of discipline among the members of the particular sect ; and to punish it as an offence against the public, would be to treat it as what it clearly is not, and to enforce by the civil arm the laws of a religious society…]

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Harvey *against* Boies.

Words which impute an offence against morality, are not actionable, unless the offence be indictable, or induce some legal disability. Therefore to say, "J. H. swore a lie before the sessions, and I can prove it by twenty witnesses," is not actionable.

THIS record was returned with a writ of error which issued to the Court of Common Pleas of *Beaver* county, where it was an action of slander brought by John Harvey, the plaintiff in error, against John Boies, the defendant in error, for speaking the following words: "John Harvey swore a lie before the sessions, and I can prove it by twenty people;" which the court below (Shaler, president), charged the jury were not actionable, and the plaintiff therefore could not recover—to which opinion the plaintiff excepted, and the same was assigned for error in this court.

Fetterman for the plaintiff in error.—Christianity is a part of the law, and ecclesiastical tribunals are essential to its propagation and existence, and hence the necessity of recognising as judicial, those tribunals which have been erected among all denominations for the administration of those laws, which although peculiar to the respective subjects of them, are nevertheless binding and obligatory. To deprive them of their habitual mode of inquiring after truth, is to deprive them of the power of administering their laws, and punishing in their own way, offenders. The offence of false swearing, before the tribunal of an ecclesiastical body, is in point of morality, as great as perjury before a temporal court; and every reason which prompts the punishment of the offender in one case, is equally applicable to the other.

In the course of his argument, Mr. *Fetterman* cited, Commonwealth *v.* Updegraff, 2 Day 3; McMillan *v.* Birch, 1 Binn. 186; 1 Croke 135, 185; Eckert *v.* Wilson, 10 S. & R. 47; Guardians of the Poor *v.* Greene, 5 Binn. 555; Hawk. Pleas of the Crown 430, book 1, chap. 3.

H. M. Watts, for defendant in error.—Actionable words must contain in themselves an express imputation of an offence which would be indictable, and which might subject the party to infamous punishment. Onslow *v.* Horn, 3 Wilson 186; McClurg *v.* Ross, 5 Binn. 218; Shaffer *v.* Kintzer, 1 Binn. 552; Brooker *v.* Coffin, 5 Johns. R. 191.

The office of the innuendo is to elucidate, and not to enlarge the meaning or common import of the words spoken. Do the words as spoken and laid in the declaration charge Boies with an offence for which if true he might be indicted, and if convicted, punished? Perjury is false swearing when a lawful oath is administered by a judicial tribunal having power to administer an oath. The sessions

"at common law" = "At Law"

AT LAW:

1. This phrase is used to point out that a thing **is to be done according to the course of the common law**; it is distinguished from a proceeding in equity.

2. In many cases [of admiralty and maritime jurisdiction] **when there is no remedy** at law, one will be **afforded in equity**.

See 3 Bouv. Inst. n. 2411.

[is to be done [MANDATORY LANGUAGE] according [PURSUANT] to THE course [DUE COURSE=DUE PROCESS] of the COMMON LAW

Bouvier's Common Law Dictionary, John Bouvier, 1856, Pg.162

https://archive.org/details/7817906-bouvier-s-common-law-dictionary

COURSE, *noun*

10. Manner of proceeding...][...series of actions]

In Suits **at common law**, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

" at common law "

The phrase at common law signifies by the common law of the land, independently of the statute law, or without the statute law —according to the rules or principles of the common law, or custom of the realm, apart altogether from statute or act of parliament

Les termes de la ley, or, Certaine difficult and obscure words and termes of the common lawes and statutes of this realme now in use expounded and explained

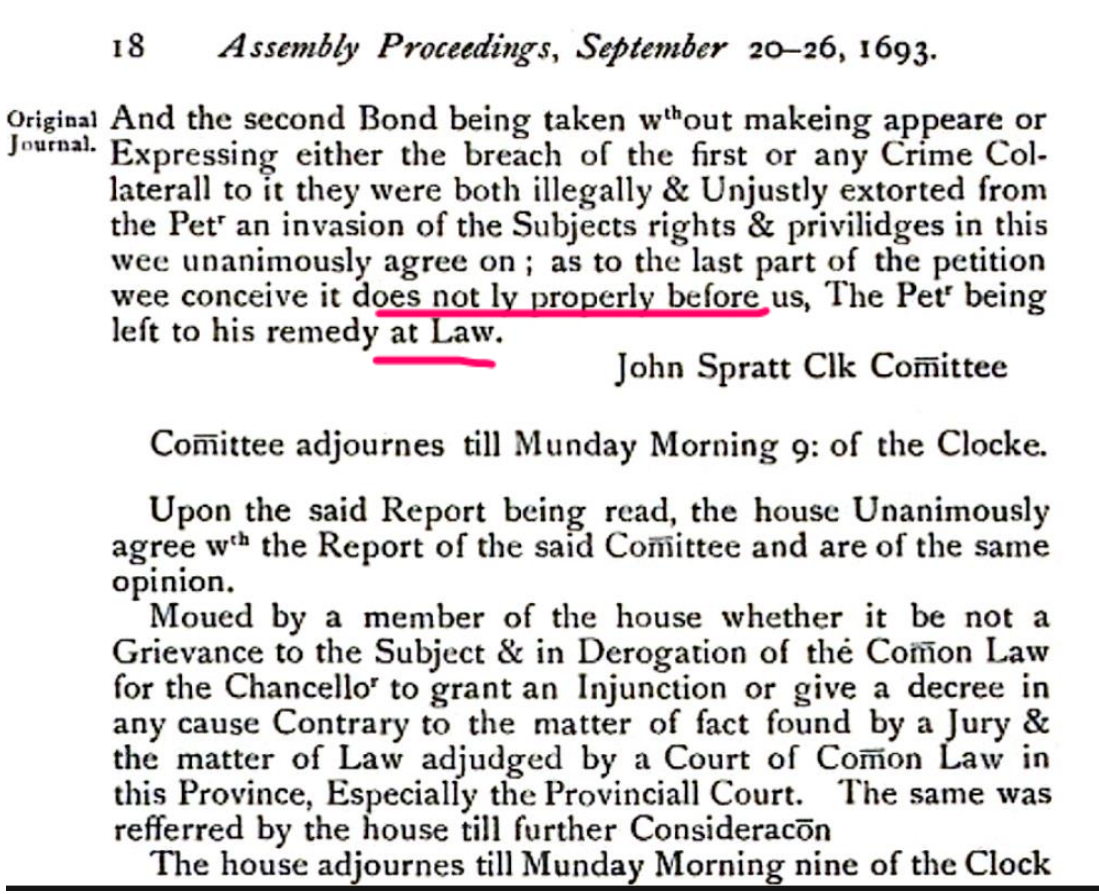
John Rastell, William Rastell, 1636

https://archive.org/details/lestermesdelale00unkngoog

September 20-26, 1693.
Maryland Assembly Proceedings

Comittee adjournes till Munday Morning 9: of the Clocke.
Upon the said Report being read, the house Unanimously agree w the Report of the said Comittee and are of the same opinion.

Moved by a member of the house whether it be not a Grievance to the Subject & in Derogation of the Common Law for the Chancellor to grant an Injunction or give a decree in any cause Contrary to the matter of fact found by a Jury & the matter of Law adjudged by a Court of Common Law in this Province, Especially the Provinciall Court. The same was refferred by the house till further Consideracon
The house adjourns till Munday Morning nine of the Clock



18 *Assembly Proceedings, September* 20–26, 1693.

Original Journal. And the second Bond being taken w^th^out makeing appeare or Expressing either the breach of the first or any Crime Collaterall to it they were both illegally & Unjustly extorted from the Pet^r^ an invasion of the Subjects rights & privilidges in this wee unanimously agree on; as to the last part of the petition wee conceive it does not ly properly before us, The Pet^r^ being left to his remedy at Law.

John Spratt Clk Comittee

Comittee adjournes till Munday Morning 9: of the Clocke.

Upon the said Report being read, the house Unanimously agree w^th^ the Report of the said Comittee and are of the same opinion.

Moued by a member of the house whether it be not a Grievance to the Subject & in Derogation of the Common Law for the Chancello^r^ to grant an Injunction or give a decree in any cause Contrary to the matter of fact found by a Jury & the matter of Law adjudged by a Court of Common Law in this Province, Especially the Provinciall Court. The same was refferred by the house till further Consideracon

The house adjournes till Munday Morning nine of the Clock

Article 7 Principles found in Maryland in 1693
Chancery/Equity Abrogating Common Law

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Also @ or near slide #88

COMMON LAW. That system of law or form of the science of jurisprudence which has prevailed in England and in the United States of America, in contradistinction to other great systems, such as the Roman or civil law.

As distinguished from statute law, those principles, usages, and rules of action applicable to the government and security of persons and of property, which do not rest for their authority upon any express and

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positive declaration of the will of the legislature. 1 Kent, Comm. 492.

The body of rules and remedies administered by courts of law, technically so called, in contradistinction to those of equity, and to the canon law. 3 Pet. (U. S.) 446.

The law of any country, to denote that which is common to the whole country, in contradistinction to laws and customs of local application.

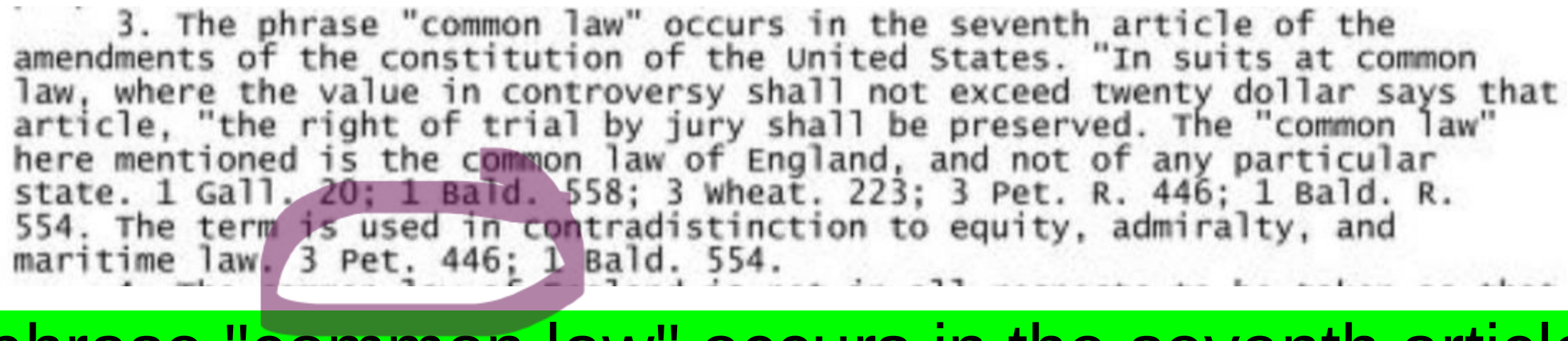
As used in the United States, it includes both the unwritten law of England and the statutes passed before the settlement of the United States. 5 Pet. (U. S.) 241; 18 Wis. 147.

The common law is not fixed in its scope, but develops new principles by analogy as new conditions arise. 42 Ala. 597.

COMMON-LAW PROCEDURE ACTS. Three acts of parliament, passed in the years 1852, 1854, and 1860, respectively, for the amendment of the procedure in the common-law courts. The common-law procedure act of 1852 is St. 15 & 16 Vict. c. 76, that of 1854, St. 17 & 18 Vict. c. 125, and that of 1860, St. 23 & 24 Vict. c. 126. Mozley & W.

COMMON LAWYER. A lawyer learned in the common law.

COMMON LEARNING. Familiar law or doctrine. Dyer, 27b, 33.


3. The phrase "common law" occurs in the seventh article of the amendments of the constitution of the United States. "In suits at common law, where the value in controversy shall not exceed twenty dollar says that article, "the right of trial by jury shall be preserved. The "common law" here mentioned is the common law of England, and not of any particular state. 1 Gall. 20; 1 Bald. 558; 3 Wheat. 223; 3 Pet. R. 446; 1 Bald. R. 554. The term is used in contradistinction to equity, admiralty, and maritime law. 3 Pet. 446; 1 Bald. 554.

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https://archive.org/details/7817906-bouvier-s-common-law-dictionary/page/826/mode/1up?view=theater

CONSTRUCTION, practice. It is defined by Mr. Powell to be "the drawing in inference by the act of reason, as to the intent of an instrument, from given circumstances, upon principles deduced from men's general motives, conduct and action." This definition may, perhaps, not be sufficiently complete, inasmuch as the term instrument generally implies something reduced into writing, whereas construction, is equally necessary to ascertain the meaning of engagements merely verbal. In other respects it appears to be perfectly accurate. The Treatise of Equity, defines interpretation to be the collection of the meaning out of signs the most probable. 1 Powell on Con. 370.

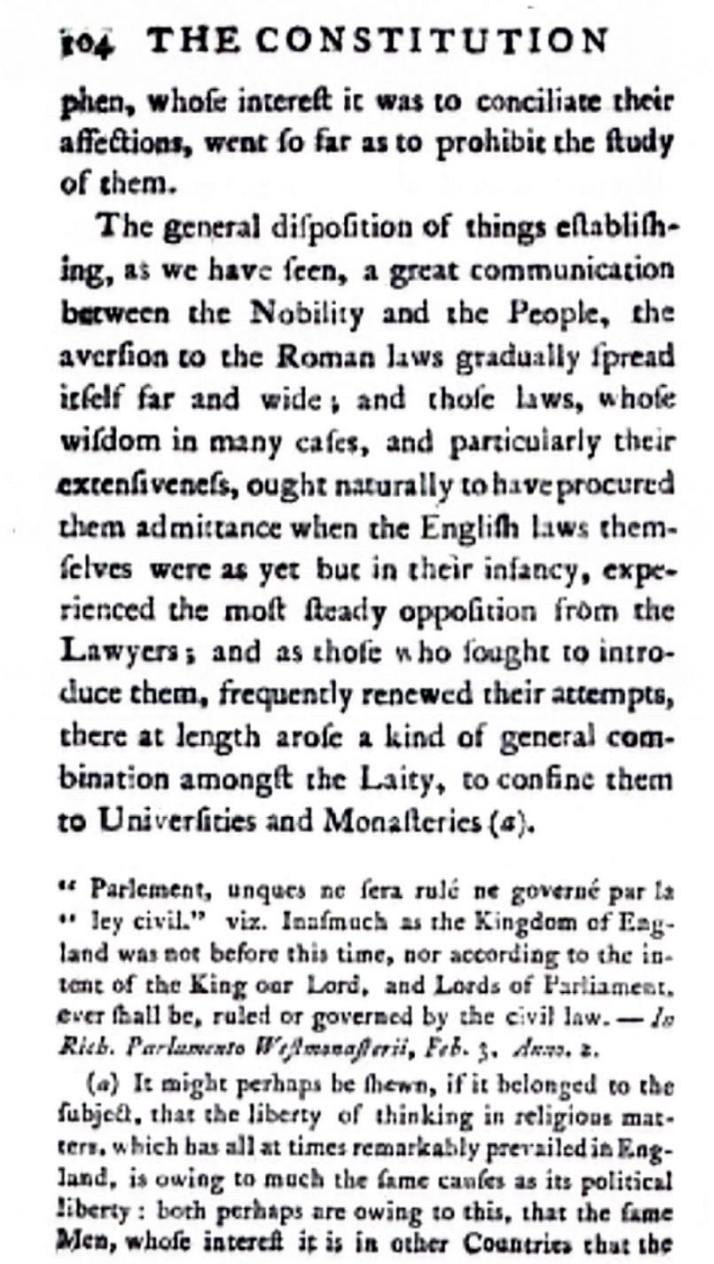
2. There are two kinds of constructions; the first, is literal or strict; this is uniformly the construction given to penal statutes. 1 Bl. Com. 88; 6 Watt's & Serg. 276; 3 Taunt. 377. 2d. The other is liberal, and applied, usually, to remedial laws, in order to enforce them according to their spirit.

3. In the supreme court of the United States, the rule which has been uniformly observed in construing statutes, is to adopt the construction made by the courts of the country by whose legislature the statute was enacted. This rule may be susceptible of some modification when applied to British statutes which are adopted in any of these states. By adopting them, they become our own, as entirely as if they had been enacted by the legislature of the state.

4. The received construction, in England, at the time they are admitted to operate in this country - indeed, to the time of our separation from the British empire - may very properly be considered as accompanying the statutes themselves, and forming an integral part of them. But, however we may respect the subsequent decisions (and certainly they are entitled to great respect,) we do not admit their absolute authority. If the English courts vary their construction of a statute, which is common to the two countries, we do not hold ourselves bound to fluctuate with them. 5 Pet. R. 280.

5. The great object which the law has in all cases, in contemplation, as furnishing the leading principle of the rules to be observed in the construction of contracts, is, that justice is to be done between the parties, by enforcing the performance of their agreement, according to the sense in which it was mutually understood and relied upon at the time of making it.

Commenced. 14 East, 539.
Commerce - Navigation. 9 Wheat. 1.
Commission and guaranty. 3 Whart. 288.
Commit. 3 Man. Gr. & Scott, 465, 477.
Commit suicide. 3 Man. Gr. & Scott, 477.
Commodities. 12 Mass 256.
Common law. 3 Pet. 447; 1 Gall. R. 19.



104 THE CONSTITUTION

phen, whoſe intereſt it was to conciliate their affections, went ſo far as to prohibit the ſtudy of them.

The general diſpoſition of things eſtabliſhing, as we have ſeen, a great communication between the Nobility and the People, the averſion to the Roman laws gradually ſpread itſelf far and wide; and thoſe laws, whoſe wiſdom in many caſes, and particularly their extenſiveneſs, ought naturally to have procured them admittance when the Engliſh laws themſelves were as yet but in their infancy, experienced the moſt ſteady oppoſition from the Lawyers; and as thoſe who ſought to introduce them, frequently renewed their attempts, there at length aroſe a kind of general combination amongſt the Laity, to confine them to Univerſities and Monaſteries (a).

" Parlement, unques ne ſera rulé ne governé par la " ley civil." viz. Inaſmuch as the Kingdom of England was not before this time, nor according to the intent of the King our Lord, and Lords of Parliament, ever ſhall be, ruled or governed by the civil law. — *In Rich. Parliamento Weſtmonaſterii, Feb.* 3. *Anno.* 2.

(a) It might perhaps be ſhewn, if it belonged to the ſubject, that the liberty of thinking in religious matters, which has all at times remarkably prevailed in England, is owing to much the ſame cauſes as its political liberty: both perhaps are owing to this, that the ſame Men, whoſe intereſt it is in other Countries that the

Pg. 104

The general disposition of things establishing, as we have seen, a great communication between the Nobility and the People, the aversion to the Roman laws gradually spread itself far and wide; and those laws, whose wisdom in many cases, and particularly their extensiveness, ought naturally to have procured them admittance when the English laws themselves were as yet but in their infancy, experienced the most steady opposition from the Lawyers; and as those who sought to introduce them, frequently renewed their attempts, there at length arose a kind of general combination amongst the Laity, to confine them to Universities and Monasteries [Oxford]

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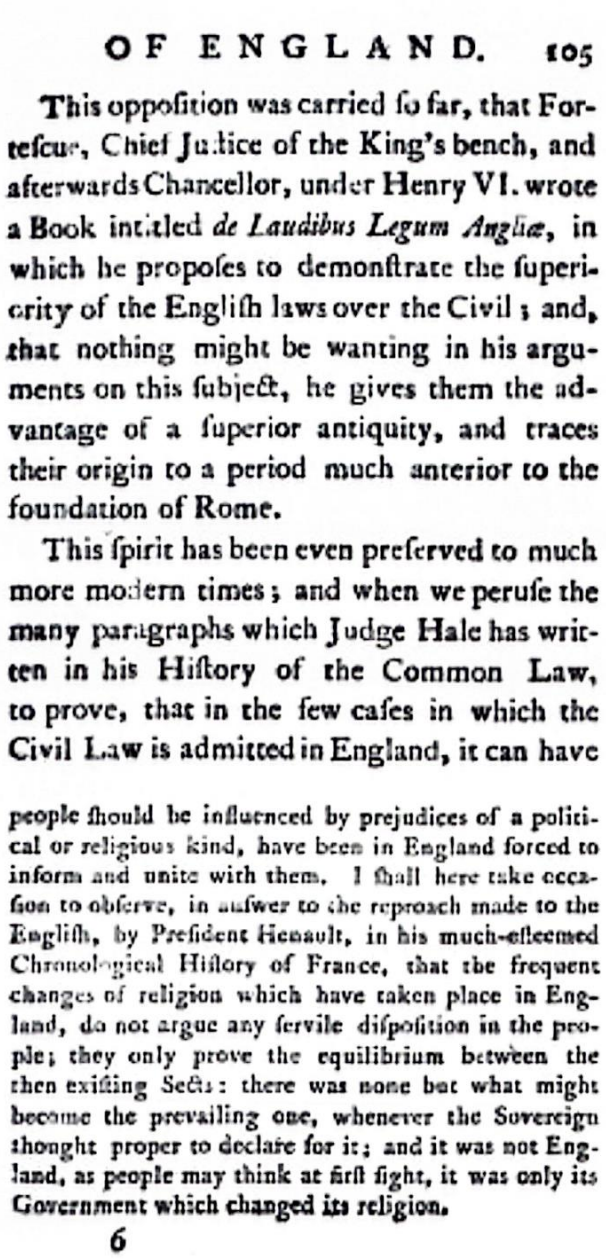


OF ENGLAND. 105

This oppoſition was carried ſo far, that Forteſcue, Chief Juſtice of the King's bench, and afterwards Chancellor, under Henry VI. wrote a Book intitled *de Laudibus Legum Angliæ*, in which he propoſes to demonſtrate the ſuperiority of the Engliſh laws over the Civil; and, that nothing might be wanting in his arguments on this ſubject, he gives them the advantage of a ſuperior antiquity, and traces their origin to a period much anterior to the foundation of Rome.

This ſpirit has been even preſerved to much more modern times; and when we peruſe the many paragraphs which Judge Hale has written in his Hiſtory of the Common Law, to prove, that in the few caſes in which the Civil Law is admitted in England, it can have

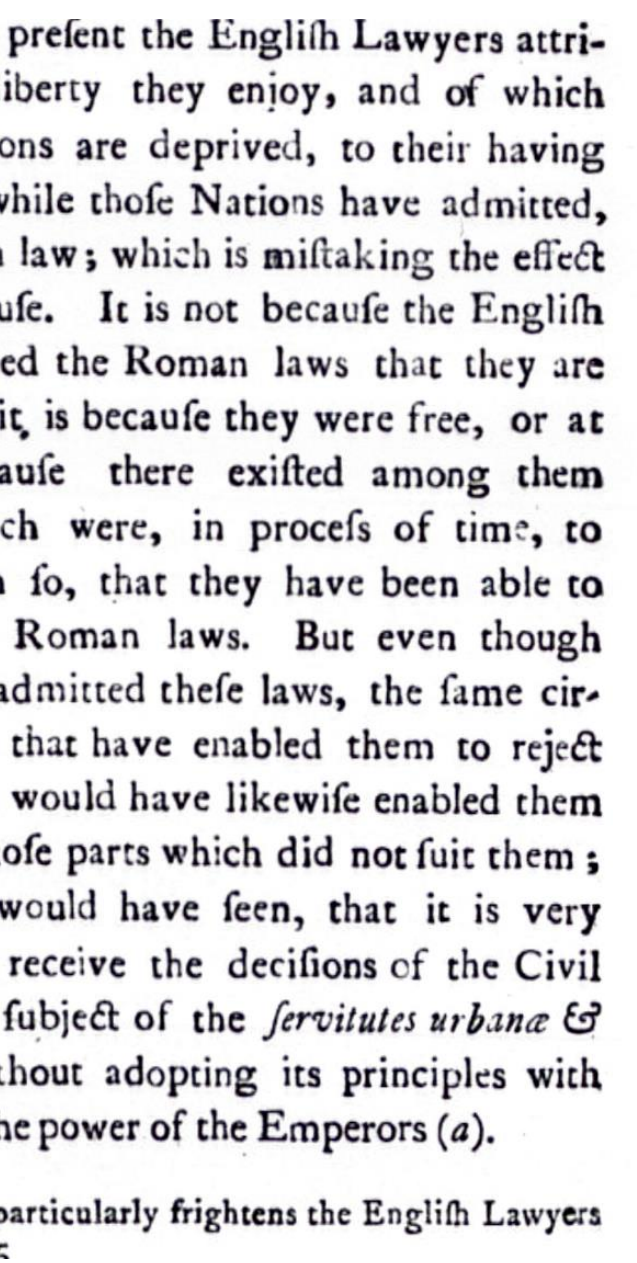
people ſhould be influenced by prejudices of a political or religious kind, have been in England forced to inform and unite with them. I ſhall here take occaſion to obſerve, in anſwer to the reproach made to the Engliſh, by Preſident Henault, in his much-eſteemed Chronological Hiſtory of France, that the frequent changes of religion which have taken place in England, do not argue any ſervile diſpoſition in the people; they only prove the equilibrium between the then exiſting Sects: there was none but what might become the prevailing one, whenever the Sovereign thought proper to declare for it; and it was not England, as people may think at firſt ſight, it was only its Government which changed its religion.

6

Pg. 105

This opposition was carried so far, that Fortescue, Chief Jutice of the King's bench, and afterwards Chancellor, under Henry VI. Wrote 2 Books intitled de Laudibus Legum Anglia, in which he proposes to demonstrate the Superiority of the English laws over the Civil; and, that nothing might be wanting in his arguments on this subject, he gives them the advantage of a Superior antiquity, and traces their origin to a period much anterior to the foundation of Rome. [The Bible]

This Spirit has been even preserved to much more modern times; and when we peruse the many paragraphs which Judge Hale has written in his History of the Common Law, to prove, that in the few cases in which the Civil Law is admitted in England, it can have no power by virtue of any deference due to the orders of Justinian….]



preſent the Engliſh Lawyers attri-
iberty they enjoy, and of which
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ch were, in proceſs of time, to
ſo, that they have been able to
Roman laws. But even though
admitted theſe laws, the ſame cir-
that have enabled them to reject
would have likewiſe enabled them
oſe parts which did not ſuit them;
would have ſeen, that it is very
receive the deciſions of the Civil
ſubject of the *ſervitutes urbanæ* &
thout adopting its principles with
he power of the Emperors (*a*).

particularly frightens the Engliſh Lawyers

Pg. 106

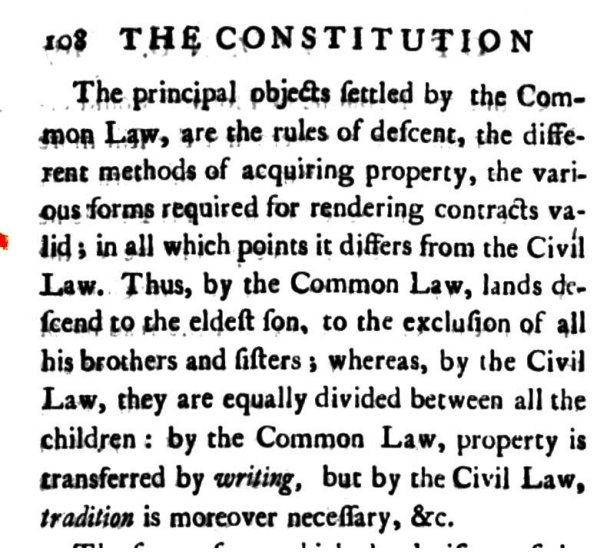
Even at present the English Lawyers attribute the liberty they enjoy, and of which other Nations are deprived, to their having rejected, while those Nations have admitted, the Roman law; which is mistaking the effect for the cause. It is not because the English have rejected the Roman laws that they are free; but it, is because they were free, or at least, because there existed among them causes which were, in process of time, to wake them so, that they have been able to reject the Roman laws.

https://archive.org/details/bim_eighteenth-century_the-constitution-of-engl_de-lolme-jean-louis_1777/page/104/mode/2up?q=stephen

FLETA
(a commentary on Bracton)

an early treatise on the common law of England. It was written in Latin with the sub-title seu Commentarius juris Anglicani.

https://archive.org/details/fletavolumeivboo0000na/page/n251/mode/2up?view=theater&q=civil

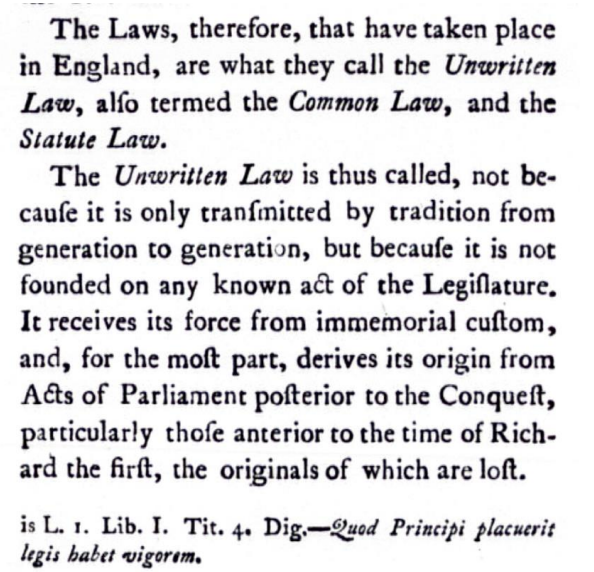


108 THE CONSTITUTION

The principal objects ſettled by the Common Law, are the rules of deſcent, the different methods of acquiring property, the various forms required for rendering contracts valid; in all which points it differs from the Civil Law. Thus, by the Common Law, lands deſcend to the eldeſt ſon, to the excluſion of all his brothers and ſiſters; whereas, by the Civil Law, they are equally divided between all the children: by the Common Law, property is transferred by *writing*, but by the Civil Law, *tradition* is moreover neceſſary, &c.

Pg. 108

The principal objects settled by the Common Law, are the rules of descent, the different methods of acquiring property, the various forms required for rendering contracts valid; in all which points it differs from the Civil Law. Thus, by the Common Law, lands defend to the eldeft fon, to the exclusion of all his brothers and sisters; whereas, by the Civil Law, they are equally divided between all the children: by the Common Law, property is transferred by writing, but by the Civil Law, tradition is moreover necessary, &c.



The Laws, therefore, that have taken place in England, are what they call the *Unwritten Law*, alſo termed the *Common Law*, and the *Statute Law*.

The *Unwritten Law* is thus called, not becauſe it is only tranſmitted by tradition from generation to generation, but becauſe it is not founded on any known act of the Legiſlature. It receives its force from immemorial cuſtom, and, for the moſt part, derives its origin from Acts of Parliament poſterior to the Conqueſt, particularly thoſe anterior to the time of Richard the firſt, the originals of which are loſt.

is L. 1. Lib. I. Tit. 4. Dig.—*Quod Principi placuerit legis habet vigorem.*

The Laws, therefore, that have taken place in England, are what they call the Unwritten Law, also termed the Common Law, and the Statute Law. The Unwritten Law is thus called, not because it is only transmitted by tradition from generation to generation, but because it is not founded on any known act of the Legislature, It receives its force from immemorial custom, and, for the most part, derives its origin from Acts of Parliament posterior to the Conquest, particularly those anterior to the time of Richard the first, the originals of which are lost.

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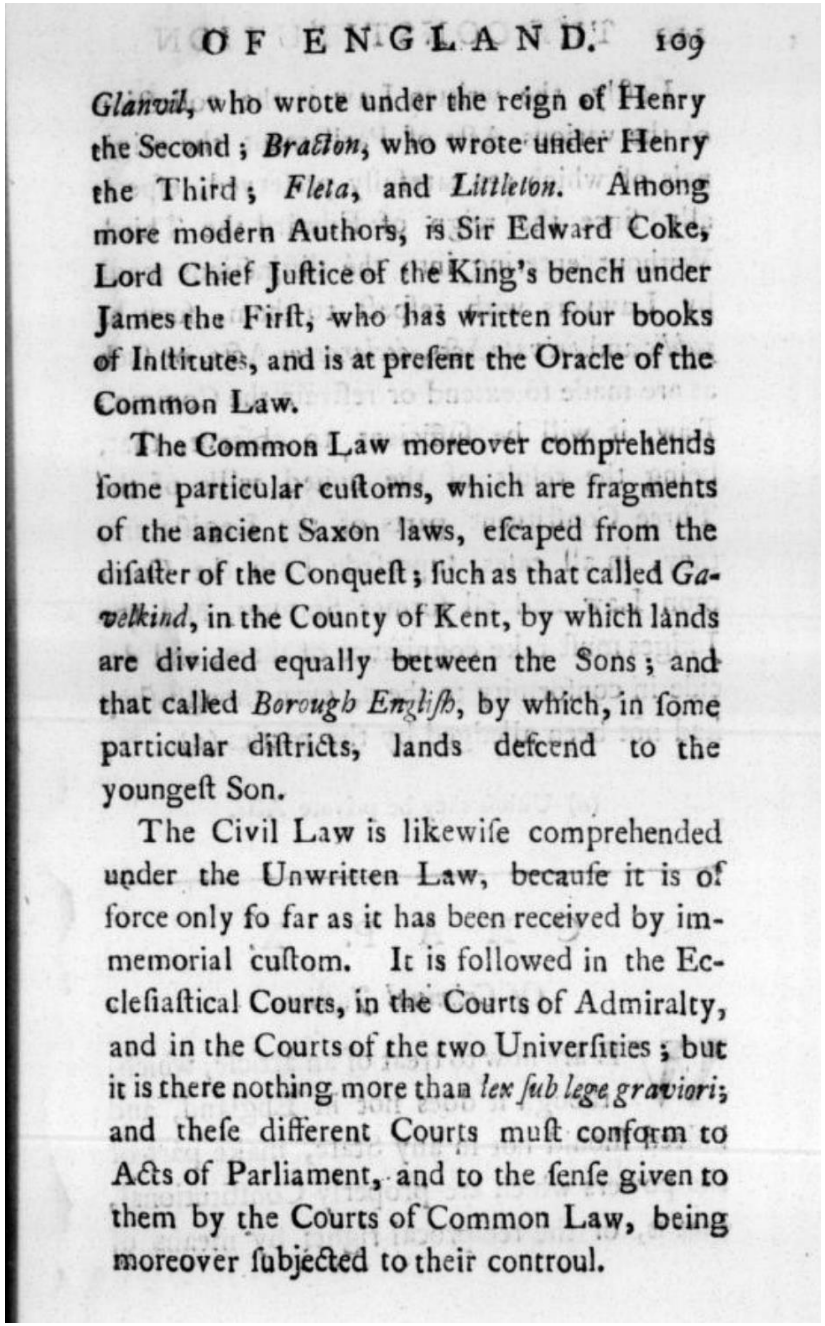


OF ENGLAND. 109

Glanvil, who wrote under the reign of Henry the Second; *Bracton*, who wrote under Henry the Third; *Fleta*, and *Littleton*. Among more modern Authors, is Sir Edward Coke, Lord Chief Juſtice of the King's bench under James the Firſt, who has written four books of Inſtitutes, and is at preſent the Oracle of the Common Law.

The Common Law moreover comprehends ſome particular cuſtoms, which are fragments of the ancient Saxon laws, eſcaped from the diſaſter of the Conqueſt; ſuch as that called *Gavelkind*, in the County of Kent, by which lands are divided equally between the Sons; and that called *Borough Engliſh*, by which, in ſome particular diſtricts, lands deſcend to the youngeſt Son.

The Civil Law is likewiſe comprehended under the Unwritten Law, becauſe it is of force only ſo far as it has been received by immemorial cuſtom. It is followed in the Eccleſiaſtical Courts, in the Courts of Admiralty, and in the Courts of the two Univerſities; but it is there nothing more than *lex ſub lege graviori*; and theſe different Courts muſt conform to Acts of Parliament, and to the ſenſe given to them by the Courts of Common Law, being moreover ſubjected to their controul.

[...Glanvil who wrote under the reign of Henry the Second; Bracton, who wrote under Henry the Third; Fleta, and Littleton.

Among more modern Authors; is Sir Edward Coke, Lord Chief Justice of the King's bench under James the First, who has written four books of Institutes, and is at present the Oracle of the Common Law.

The Common Law moreover comprehends some particular customs, which are fragments of the ancient Saxon laws, escaped from the disaster of the Conquest; such as that called Gavelkind, in the County of Kent, by which lands are divided equally between the Sons; and that called Borough English, by which, in some particular districts, lands descend to the youngest Son. The Civil Law is likewise comprehended under the Unwritten Law, because it is of force only so far as it has been received by immemorial custom. It is followed in the Ecclesiastical Courts, in the Courts of Admiralty, and in the Courts of the two Universities ; but it is there nothing more than lex sub lege graviori [A law under a heavier law]; and these different Courts must conform to Acts of Parliament, and to the sense given to them by the Courts of Common Law, being moreover subjected to their controul.

https://archive.org/details/bim_eighteenth-century_the-constitution-of-engl_de-lolme-jean-louis_1777/page/104/mode/2up?q=stephen

Fortesque on common law & civil law

Sir John Fortescue (born c. 1385, Norris, Somerset, Eng.—died c. 1479, Ebrington, Gloucestershire) was a jurist, notable for a legal treatise, De laudibus legum Angliae (c. 1470; “In Praise of the Laws of England”), written for the instruction of Edward, prince of Wales, son of the deposed king Henry VI of England. He also stated a moral principle that remains basic to the Anglo-American jury system: It is better that the guilty escape than that the innocent be punished. ...][Fortescue became chief justice of the King’s Bench in 1442...]

[.. De laudibus depreciates the Roman-derived civil law and eulogizes the English constitution, statutes, and system of legal education, while offering suggestions for reform. It was probably the first book about law written in a style so simple and lucid as to be comprehensible to the layman.

[A Later Guide for Hooker, Coke, and Adams]

[...These are principles reiterated by such later authorities as Richard Hooker (d. 1600) as forming the groundwork of personal liberty and free government in England and intended in the maxim “Laws they are not therefore which public approbation hath not made so.”[2] Fortescue is the first writer who specifically asserts the power of Parliament to be a limit upon the authority of the king.[3] That supreme seventeenth-century oracle of the common law, Sir Edward Coke, so admired *Praise* that he thought it “worthy to be written in Letters of Gold for the Weight and Worthiness thereof. 4...]

[In the history of liberty through rule of law, then, Fortescue stands in the line of celebrated English political, legal, and constitutional writers running from Henry de Bracton (d. ca. 1268) to Christopher St. Germain (d. 1540) to Richard Hooker through Sir Edward Coke (d. 1634) to Edmund Burke (d. 1797)—and so also to John Adams and the generation of American founders of the late eighteenth century who imbibed the writings of these authorities.]

[AMONG MANY MORE...Rastell, Dalton, Sydney, Locke...And through Coke/Littleton, Jefferson, Patrick Henry,James Madison, John Quincy Adams, John Jay, Daniel Webster, George Mason etc. Etc.]

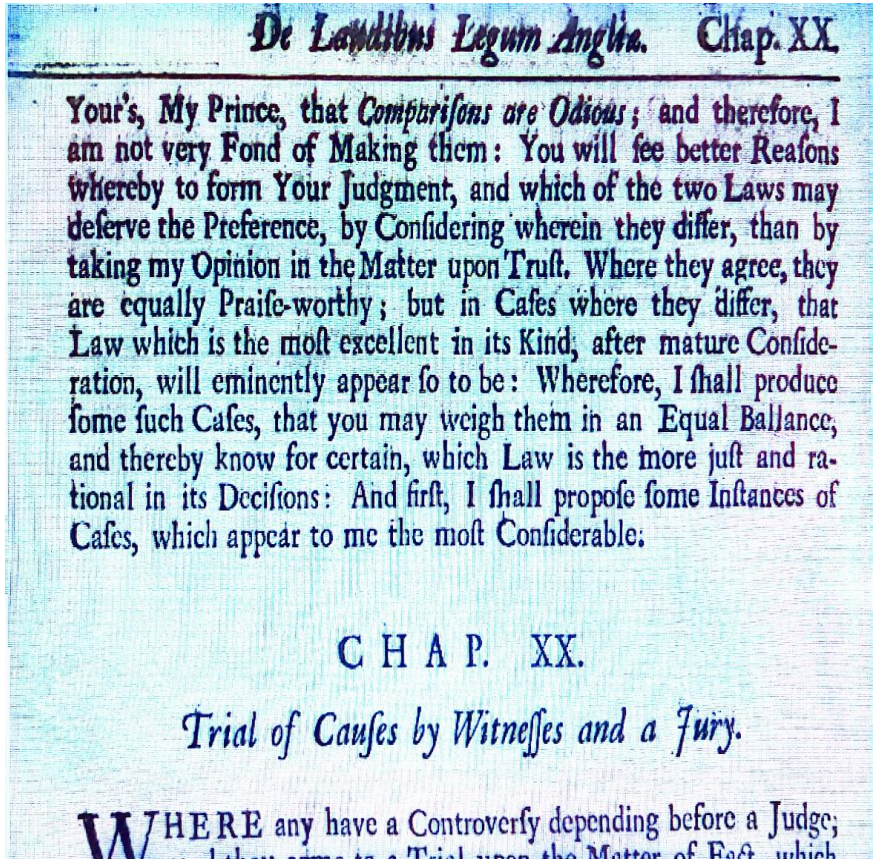
https://www.britannica.com/biography/John-Fortescue

https://voegelinview.com/fortescue-and-liberty-through-law-pt-1/

https://archive.org/search?query=creator%3A%22Fortescue%2C+Sir+John.%22

Roman Civil Law vs. Common Law

[..Your's, My Prince, that Comparisons are Odious and therefore, I am not very Fond of Making them : You will see better Reasons **whereby to form Your Judgment, and which of the two Laws may deserve the Preference, by Considering wherein they differ, than by taking my Opinion in the Matter upon trust.** Where they agree, they are equally Praise-worthy but in Cases where they differ, that Law which is the most excellent in its Kind, after mature Consideration, will eminently appear so to be: Wherefore, I shall produce Some such Cases, that you may weigh them in an Equal Balance **and thereby know for certain, which Law is the more just and rational in its Decisions.** And first, I shall propose some Intances of Cases, which appear to me the most Considerable:



De Laudibus Legum Angliæ. Chap. XX.

Your's, My Prince, that *Comparisons are Odious*; and therefore, I am not very Fond of Making them: You will see better Reasons whereby to form Your Judgment, and which of the two Laws may deserve the Preference, by Considering wherein they differ, than by taking my Opinion in the Matter upon Trust. Where they agree, they are equally Praise-worthy; but in Cases where they differ, that Law which is the most excellent in its Kind, after mature Consideration, will eminently appear so to be: Wherefore, I shall produce some such Cases, that you may weigh them in an Equal Ballance, and thereby know for certain, which Law is the more just and rational in its Decisions: And first, I shall propose some Instances of Cases, which appear to me the most Considerable.

CHAP. XX.

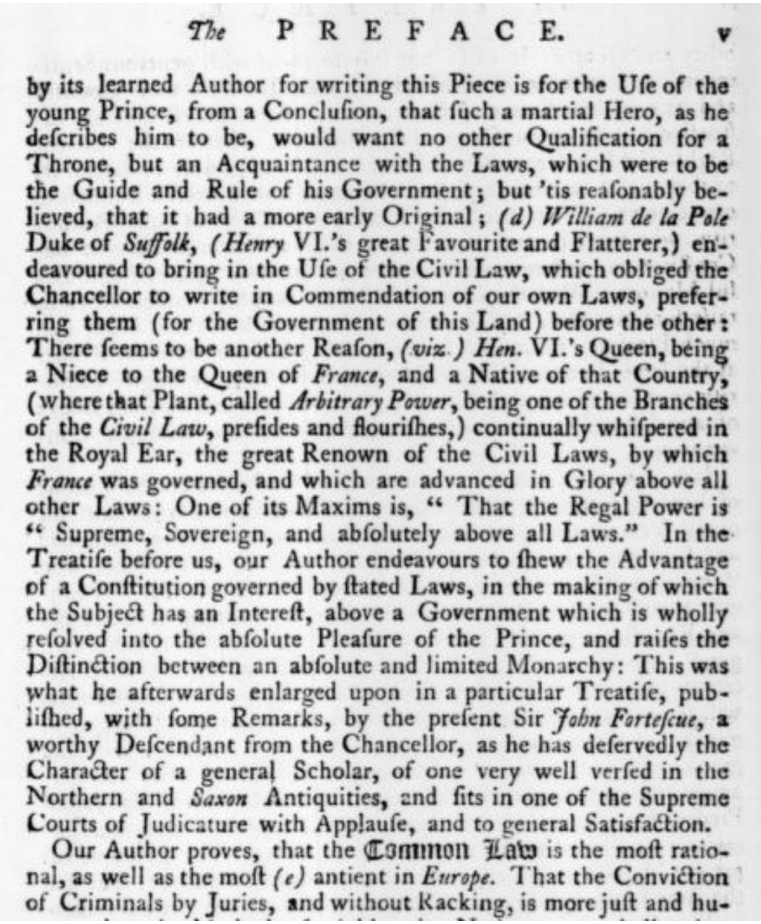
Trial of Causes by Witnesses and a Jury.

WHERE any have a Controversy depending before a Judge;

Sir Iohn Fortescue
"De laudibus legum Angliae" (In Praise of the Laws of England)
first **published posthumously around 1543**.
written by Sir John Fortescue, a Chief Justice of the King's Bench during the reign of Henry VI of England
includes writings from Sir Ralph de Hengham Lord Chief. Justice to King Edward I.
commonly calld **Hengham magn**a, and **Hengham parua**
Fortescue, Sir John, Chief Justice of the King's
1719 https://archive.org/details/bim_eighteenth-century_the-difference-between-a_fortescue-sir-john-chi_1719
1737 https://archive.org/details/bim_eighteenth-century_de-laudibus-legum-angli_fortescue-sir-john-chi_1737
1775 https://archive.org/details/bim_eighteenth-century_de-laudibus-legum-angli_fortescue-sir-john-chi_1775

Fortescue On the Civil Law

William de la Pole Duke of Suffolk, (Henry VI.'s great Favourite and Flatterer,) endeavoured to bring in the Use of the Civil Law, which obliged the Chancellor to write in Commendation of our own Laws, preferring them (for the Government of this Land) before the other: There seems to be another Reason, (viz.) Hen. VI.'s Queen, being a Niece to the Queen of France, and a Native of that Country, (where that Plant, called Arbitrary Power, being one of the Branches of the Civil Law, prefides and flouriſhes,) continually whiſpered in the Royal Ear, the great Renown of the Civil Laws, by which France was governed, and which are advanced in Glory above all other Laws: One of its Maxims is, * That the Regal Power is *© Supreme, Sovereign, and abſolutely above all Laws." In the Treatiſe before us, our Author endeavours to ſhew the Advantage of a Conſtitution governed by ſtated Laws, in the making of which the Subject has an Intereſt, above a Government which is wholly reſolved into the abſolute Pleaſure of the Prince, and raiſes the Diſtinction between an abſolute and limited Monarchy: ..][..Our Author proves, that the Common Law is the most rational, as well as the most antient in Europe. That the Conviction ' of Criminals by Juries, and without racking, is more juſt and humane, than the Methods of neighbouring Nations; our challenging of Panels, Writs of Attaint upon corrupt Verdicts, and the aua Wealth of our Jurors, ſuch Securities to the Lives and Property of the Subject, as other Countries are incapable of aftording ; that our Kings are greater and more potent in the Liberties and Properties of their People, than Arbitrary "Tyrants in the Vaſſalage of their Slaves;



The PREFACE. v

by its learned Author for writing this Piece is for the Uſe of the young Prince, from a Concluſion, that ſuch a martial Hero, as he deſcribes him to be, would want no other Qualification for a Throne, but an Acquaintance with the Laws, which were to be the Guide and Rule of his Government; but 'tis reaſonably believed, that it had a more early Original; *(d) William de la Pole* Duke of *Suffolk*, *(Henry* VI.'s great Favourite and Flatterer,) endeavoured to bring in the Uſe of the Civil Law, which obliged the Chancellor to write in Commendation of our own Laws, preferring them (for the Government of this Land) before the other: There ſeems to be another Reaſon, *(viz.) Hen.* VI.'s Queen, being a Niece to the Queen of *France*, and a Native of that Country, (where that Plant, called *Arbitrary Power*, being one of the Branches of the *Civil Law*, prefides and flouriſhes,) continually whiſpered in the Royal Ear, the great Renown of the Civil Laws, by which *France* was governed, and which are advanced in Glory above all other Laws: One of its Maxims is, " That the Regal Power is " Supreme, Sovereign, and abſolutely above all Laws." In the Treatiſe before us, our Author endeavours to ſhew the Advantage of a Conſtitution governed by ſtated Laws, in the making of which the Subject has an Intereſt, above a Government which is wholly reſolved into the abſolute Pleaſure of the Prince, and raiſes the Diſtinction between an abſolute and limited Monarchy: This was what he afterwards enlarged upon in a particular Treatiſe, publiſhed, with ſome Remarks, by the preſent Sir *John Forteſcue*, a worthy Deſcendant from the Chancellor, as he has deſervedly the Character of a general Scholar, of one very well verſed in the Northern and *Saxon* Antiquities, and fits in one of the Supreme Courts of Judicature with Applauſe, and to general Satisfaction.

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https://archive.org/details/bim_eighteenth-century_de-laudibus-legum-angli_fortescue-sir-john-chi_1775/page/n8/mode/1up

Stephen the “Usurper”

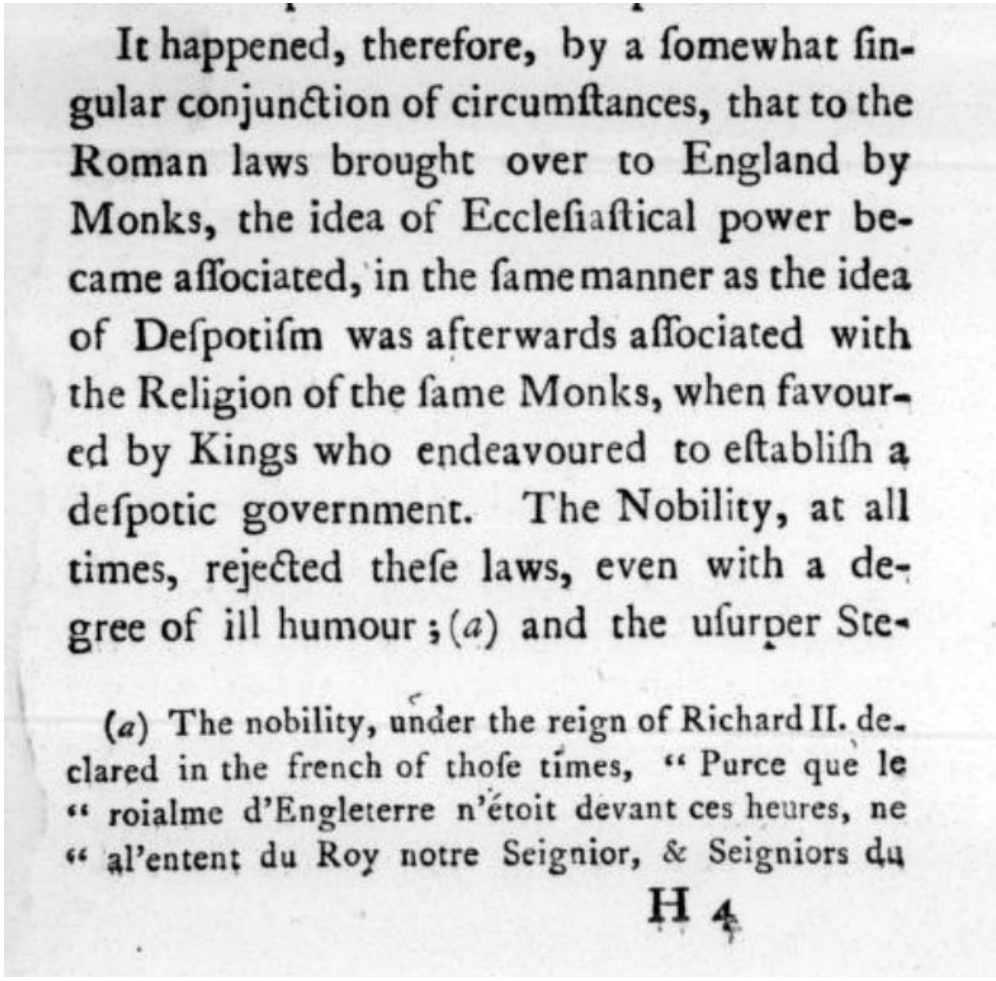
Pg. 104

[..It happened, therefore, by a somewhat singular conjunction of circumstances, that to the Roman laws brought over to England by Monks, the idea of Ecclesiastical power became associated, in the same manner as the idea of Despotism was afterwards associated with the Religion of the same Monks, when favoured by Kings who endeavoured to establish a despotic government.

The Nobility, at all times, rejected these laws, even with a degree of ill humour; (a) and the usurper Stephen,

Pg.105 ...whose interest it was to conciliate their affections, went so far as to prohibit the study of them.

The general disposition of things establishing, as we have seen, a great communication between the Nobility and the People, the aversion to the Roman laws gradually spread itself far and wide...]



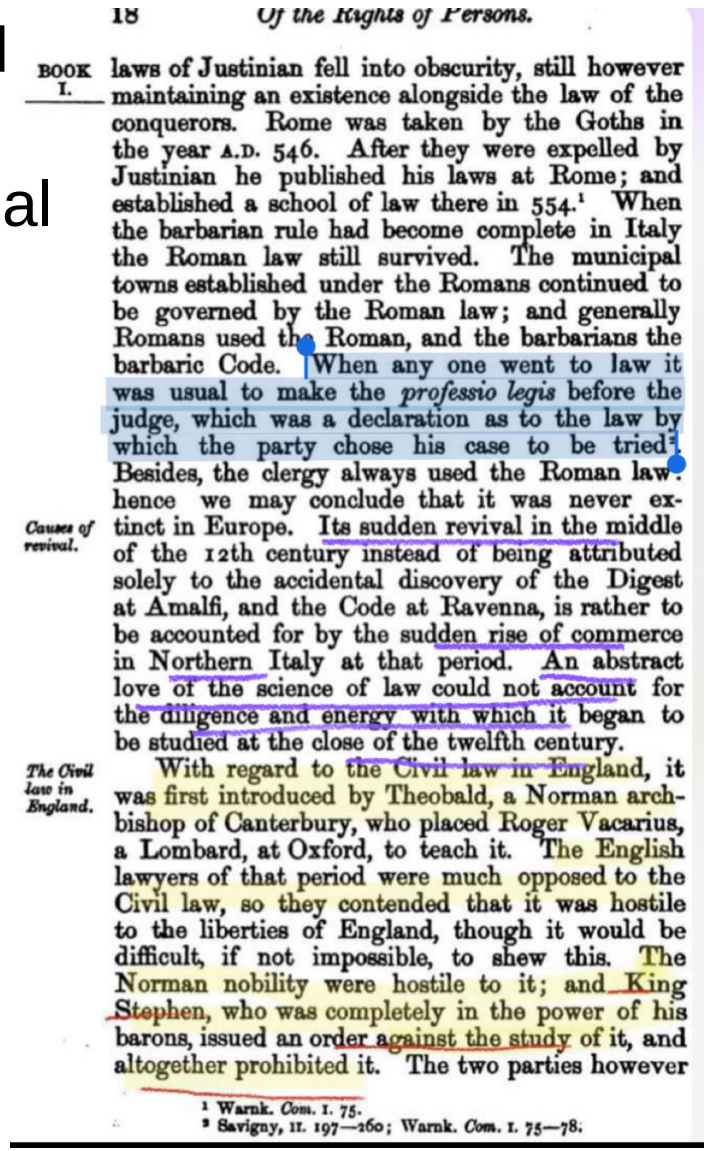
It happened, therefore, by a ſomewhat ſingular conjunction of circumſtances, that to the Roman laws brought over to England by Monks, the idea of Eccleſiaſtical power became aſſociated, in the ſame manner as the idea of Deſpotiſm was afterwards aſſociated with the Religion of the ſame Monks, when favoured by Kings who endeavoured to eſtabliſh a deſpotic government. The Nobility, at all times, rejected theſe laws, even with a degree of ill humour; (a) and the uſurper Ste-

(a) The nobility, under the reign of Richard II. declared in the french of thoſe times, " Purce que le " roialme d'Engleterre n'étoit devant ces heures, ne " al'entent du Roy notre Seignior, & Seigniors du

H 4

https://archive.org/details/bim_eighteenth-century_the-constitution-of-engl_de-lolme-jean-louis_1777

Roger Vacarius (1120-1200?) was an Italian authority in civil and canon law who was known to author the Liber pauperum which between the years 1190-1220 influenced the development of legal studies in the University of Oxford. According to Gervase of Canterbury, Vacarius became the first known teacher of Roman law in England.



18 *Of the Rights of Persons.*

BOOK I. laws of Justinian fell into obscurity, still however maintaining an existence alongside the law of the conquerors. Rome was taken by the Goths in the year A.D. 546. After they were expelled by Justinian he published his laws at Rome; and established a school of law there in 554.[1] When the barbarian rule had become complete in Italy the Roman law still survived. The municipal towns established under the Romans continued to be governed by the Roman law; and generally Romans used the Roman, and the barbarians the barbaric Code. When any one went to law it was usual to make the *professio legis* before the judge, which was a declaration as to the law by which the party chose his case to be tried[2]. Besides, the clergy always used the Roman law: hence we may conclude that it was never extinct in Europe. Its sudden revival in the middle of the 12th century instead of being attributed solely to the accidental discovery of the Digest at Amalfi, and the Code at Ravenna, is rather to be accounted for by the sudden rise of commerce in Northern Italy at that period. An abstract love of the science of law could not account for the diligence and energy with which it began to be studied at the close of the twelfth century.

Causes of revival.

The Civil law in England.

With regard to the Civil law in England, it was first introduced by Theobald, a Norman archbishop of Canterbury, who placed Roger Vacarius, a Lombard, at Oxford, to teach it. The English lawyers of that period were much opposed to the Civil law, so they contended that it was hostile to the liberties of England, though it would be difficult, if not impossible, to shew this. The Norman nobility were hostile to it; and King Stephen, who was completely in the power of his barons, issued an order against the study of it, and altogether prohibited it. The two parties however

[1] Warnk. *Com.* I. 75.
[2] Savigny, II. 197—260; Warnk. *Com.* I. 75—78.

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Each of the universities had several powers and privileges by charters from the kings of this realm, particularly one in the eighth of Hen. 4, whereby they were authorized to hold plea of all causes arising within the university according to the course of the civil law: but in the opinion of all the judges of England the grant was held not to be good; for that the king could not by his grant alter the law of the land.

By letters patent (not confirmed by parliament) dated thirtieth March, 11 Car. 1, granted to the University of Oxford, their old privileges are ex-plained, and larger granted.
1 Mod. 161, Magdalen College case; Wood's Inst. 518.
Their courts are called the Chancellors' Courts. The chancellors are usually peers of the realm, and arr appointed over the whole university. But their courts are kept by their vice-chancellors, their assistants, or deputies: the causes are managed by advocates or proctors.

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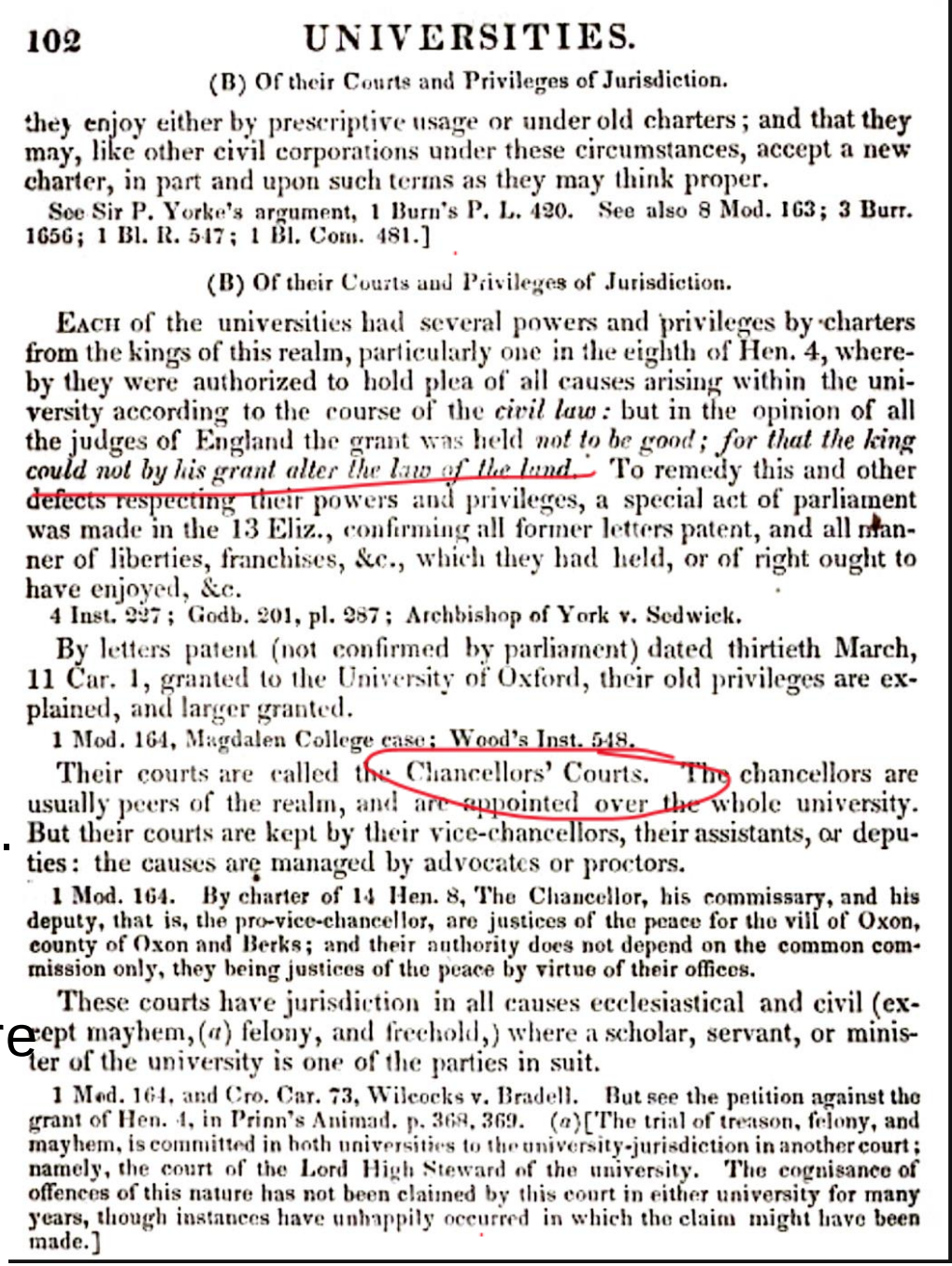

102 UNIVERSITIES.

(B) Of their Courts and Privileges of Jurisdiction.

they enjoy either by prescriptive usage or under old charters; and that they may, like other civil corporations under these circumstances, accept a new charter, in part and upon such terms as they may think proper.

See Sir P. Yorke's argument, 1 Burn's P. L. 420. See also 8 Mod. 163; 3 Burr. 1656; 1 Bl. R. 547; 1 Bl. Com. 481.]

(B) Of their Courts and Privileges of Jurisdiction.

EACH of the universities had several powers and privileges by charters from the kings of this realm, particularly one in the eighth of Hen. 4, whereby they were authorized to hold plea of all causes arising within the university according to the course of the *civil law*: but in the opinion of all the judges of England the grant was held *not to be good; for that the king could not by his grant alter the law of the land.* To remedy this and other defects respecting their powers and privileges, a special act of parliament was made in the 13 Eliz., confirming all former letters patent, and all manner of liberties, franchises, &c., which they had held, or of right ought to have enjoyed, &c.

4 Inst. 227; Godb. 201, pl. 287; Archbishop of York v. Sedwick.

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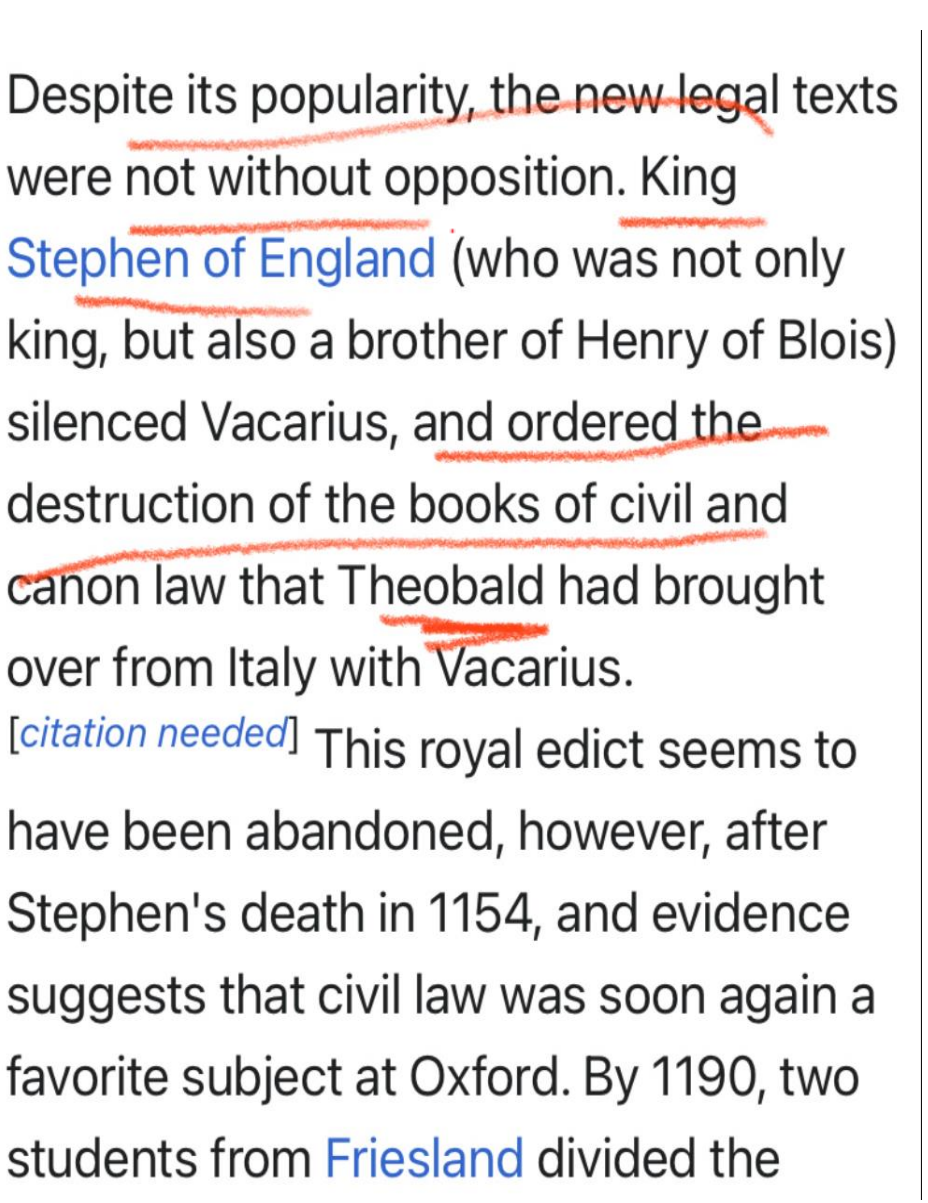
1 Mod. 164. By charter of 14 Hen. 8, The Chancellor, his commissary, and his deputy, that is, the pro-vice-chancellor, are justices of the peace for the vill of Oxon, county of Oxon and Berks; and their authority does not depend on the common commission only, they being justices of the peace by virtue of their offices.

These courts have jurisdiction in all causes ecclesiastical and civil (except mayhem, (*a*) felony, and freehold,) where a scholar, servant, or minister of the university is one of the parties in suit.

1 Mod. 164, and Cro. Car. 73, Wilcocks v. Bradell. But see the petition against the grant of Hen. 4, in Prinn's Animad. p. 368, 369. (*a*)[The trial of treason, felony, and mayhem, is committed in both universities to the university-jurisdiction in another court; namely, the court of the Lord High Steward of the university. The cognisance of offences of this nature has not been claimed by this court in either university for many years, though instances have unhappily occurred in which the claim might have been made.]

Despite its popularity, the new legal texts were not without opposition. King Stephen of England (who was not only king, but also a brother of Henry of Blois) silenced Vacarius, and ordered the destruction of the books of civil and anon law that Theobald had brought over from Italy with Vacarius.
[citation needed This royal edict seems to have been abandoned, however, after Stephen's death in 1154, and evidence suggests that civil law was soon again a favorite subject at Oxford.

https://en.wikipedia.org/wiki/Vacarius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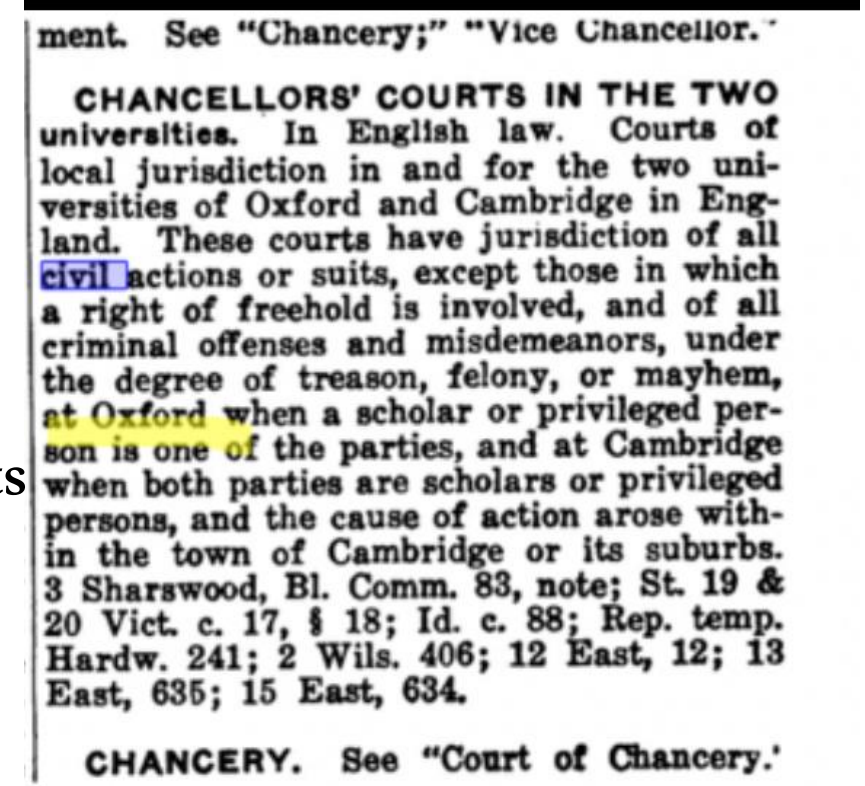
INVASION OF FOREIGN LAW ON CAMPUS

[...Chancellor's' Courts in the Two Universities .

In English law. Courts of local jurisdiction in and for the two universities of Oxford and Cambridge in England. These courts have jurisdiction of all civil actions or suits, except those in which a right of freehold is involved, and of all criminal offenses and misdemeanors, under the degree of treason, felony, or mayhem, at Oxford when a scholar or privileged person is one of the parties, and at Cambridge when both parties are scholars or privileged persons, and the cause of action arose within the town of Cambridge or its suburbs.



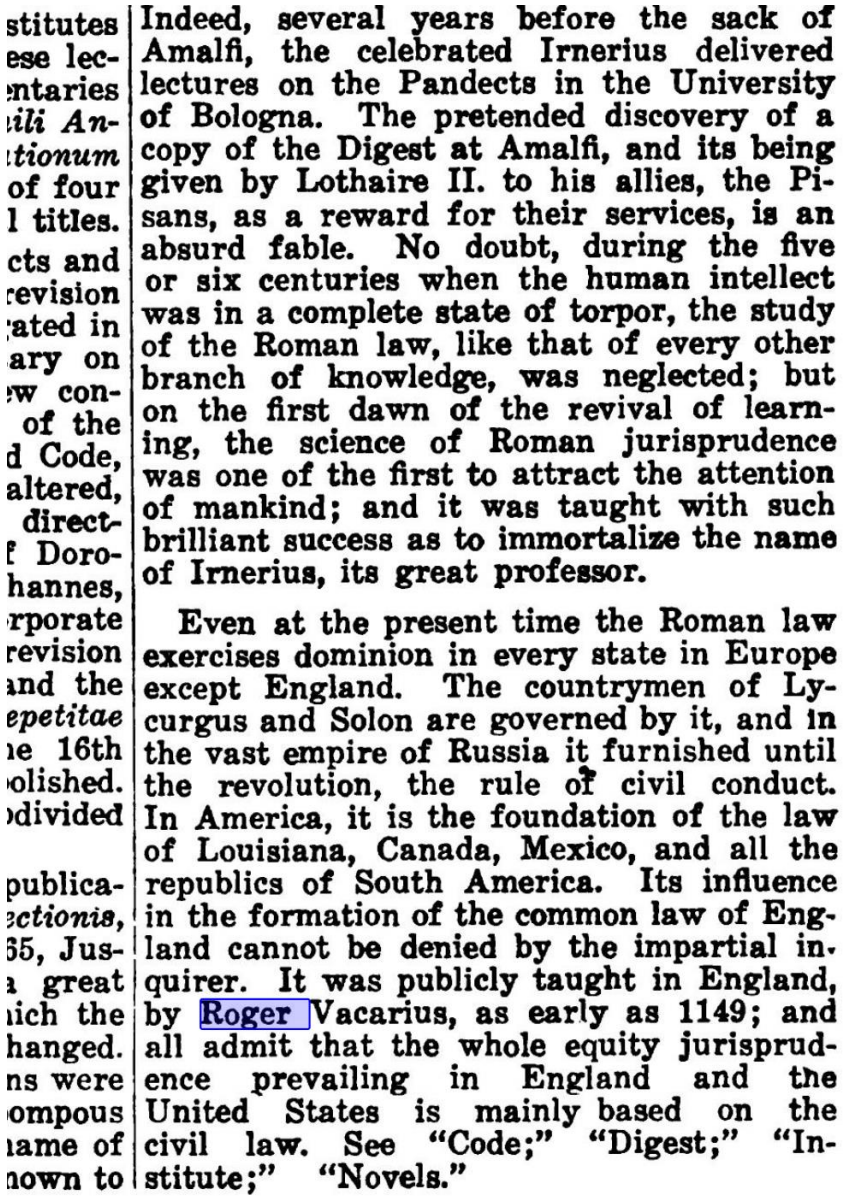
ment. See "Chancery;" "Vice Chancellor."

CHANCELLORS' COURTS IN THE TWO universities. In English law. Courts of local jurisdiction in and for the two universities of Oxford and Cambridge in England. These courts have jurisdiction of all civil actions or suits, except those in which a right of freehold is involved, and of all criminal offenses and misdemeanors, under the degree of treason, felony, or mayhem, at Oxford when a scholar or privileged person is one of the parties, and at Cambridge when both parties are scholars or privileged persons, and the cause of action arose within the town of Cambridge or its suburbs. 3 Sharswood, Bl. Comm. 83, note; St. 19 & 20 Vict. c. 17, § 18; Id. c. 88; Rep. temp. Hardw. 241; 2 Wils. 406; 12 East, 12; 13 East, 635; 15 East, 634.

CHANCERY. See "Court of Chancery."

https://archive.org/details/cyclopediclawdi00longgoog/page/169/mode/1up?view=theater&q=Roger

Even at the present time the Roman law exercises dominion in every state in Europe except England. The countrymen of Lycurgus and Solon are governed by it, and in the vast empire of Russia it furnished until the revolution, the rule of civil conduct. In America, it is the foundation of the law In Louisiana, Canada, Mexico and all the republics of South America. It's influence In the formation of the common law of England cannot be denied by the impartial inquirer. It was publicly taught in England, by Roger Vacarius, as early as 1149; and all admit that the whole equity jurisprudence prevailing in England and the United States is mainly based On civil law. See "Code"; "Digest"; "Institute"; "Novels";



stitutes ese lec- ntaries ili An- tionum of four l titles. cts and revision ated in ary on w con- of the d Code, altered, direct- f Doro- hannes, rporate revision and the epetitae ne 16th olished. odivided

publica- ectionis, 35, Jus- a great hich the hanged. ns were ompous name of nown to

Indeed, several years before the sack of Amalfi, the celebrated Irnerius delivered lectures on the Pandects in the University of Bologna. The pretended discovery of a copy of the Digest at Amalfi, and its being given by Lothaire II. to his allies, the Pisans, as a reward for their services, is an absurd fable. No doubt, during the five or six centuries when the human intellect was in a complete state of torpor, the study of the Roman law, like that of every other branch of knowledge, was neglected; but on the first dawn of the revival of learning, the science of Roman jurisprudence was one of the first to attract the attention of mankind; and it was taught with such brilliant success as to immortalize the name of Irnerius, its great professor.

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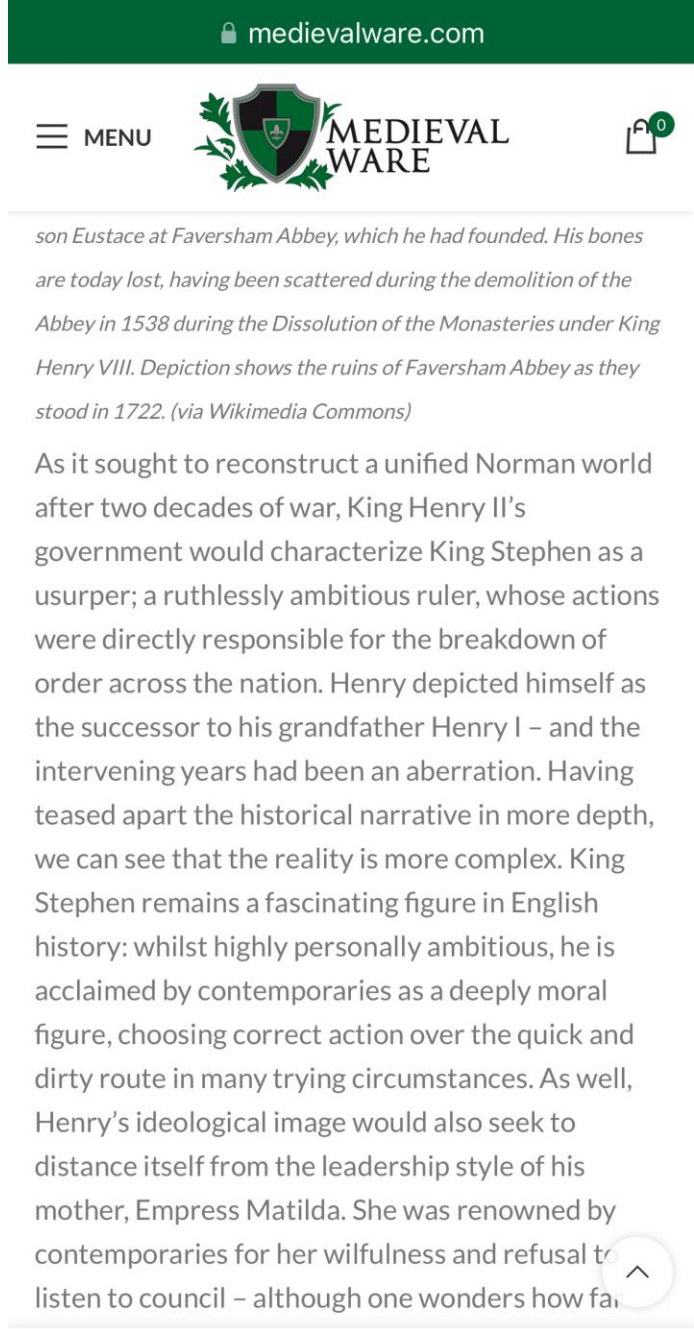
https://archive.org/details/cyclopediclawdi00longgoog/page/169/mode/1up?view=theater&q=Roger

[....As it sought to reconstruct a unified Norman world after two decades of war, King Henry II's government would characterize King Stephen as a usurper; a ruthlessly ambitious ruler, whose actions were directly responsible for the breakdown of order across the nation. Henry depicted himself as the successor to his grandfather Henry I – and the intervening years had been an aberration. Having teased apart the historical narrative in more depth, we can see that the reality is more complex. King Stephen remains a fascinating figure in English history: whilst highly personally ambitious, he is acclaimed by contemporaries as a deeply moral figure, choosing correct action over the quick and dirty route in many trying circumstances]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son Eustace at Faversham Abbey, which he had founded. His bones are today lost, having been scattered during the demolition of the Abbey in 1538 during the Dissolution of the Monasteries under King Henry VIII. Depiction shows the ruins of Faversham Abbey as they stood in 1722. (via Wikimedia Commons)
As it sought to reconstruct a unified Norman world after two decades of war, King Henry II's government would characterize King Stephen as a usurper; a ruthlessly ambitious ruler, whose actions were directly responsible for the breakdown of order across the nation. Henry depicted himself as the successor to his grandfather Henry I – and the intervening years had been an aberration. Having teased apart the historical narrative in more depth, we can see that the reality is more complex. King Stephen remains a fascinating figure in English history: whilst highly personally ambitious, he is acclaimed by contemporaries as a deeply moral figure, choosing correct action over the quick and dirty route in many trying circumstances. As well, Henry's ideological image would also seek to distance itself from the leadership style of his mother, Empress Matilda. She was renowned by contemporaries for her wilfulness and refusal t
listen to council – although one wonders how fa

https://www.medievalware.com/blog/king-stephen-empress-matilda/?fbclid=IwAR1mZVDVbdYWJ6GOphMc7mLhEtfgKyy3EVe5wWvxyfCHliLs82kKndO3LQI_aem_Ad0aEmxStTfCpFapJfy1MfUiy80zAUxDAmg5M2yclMYP_meBUH3JN1WORFvQgla0dNQ

Pg.144

By the King is understood, the person on the throne, whether a legal king or a usurper; there being a temporary allegiance due even to a usurper, for the temporary protection he affords the people.

No King, out of possession of the throne, however legal his claim to it may be,

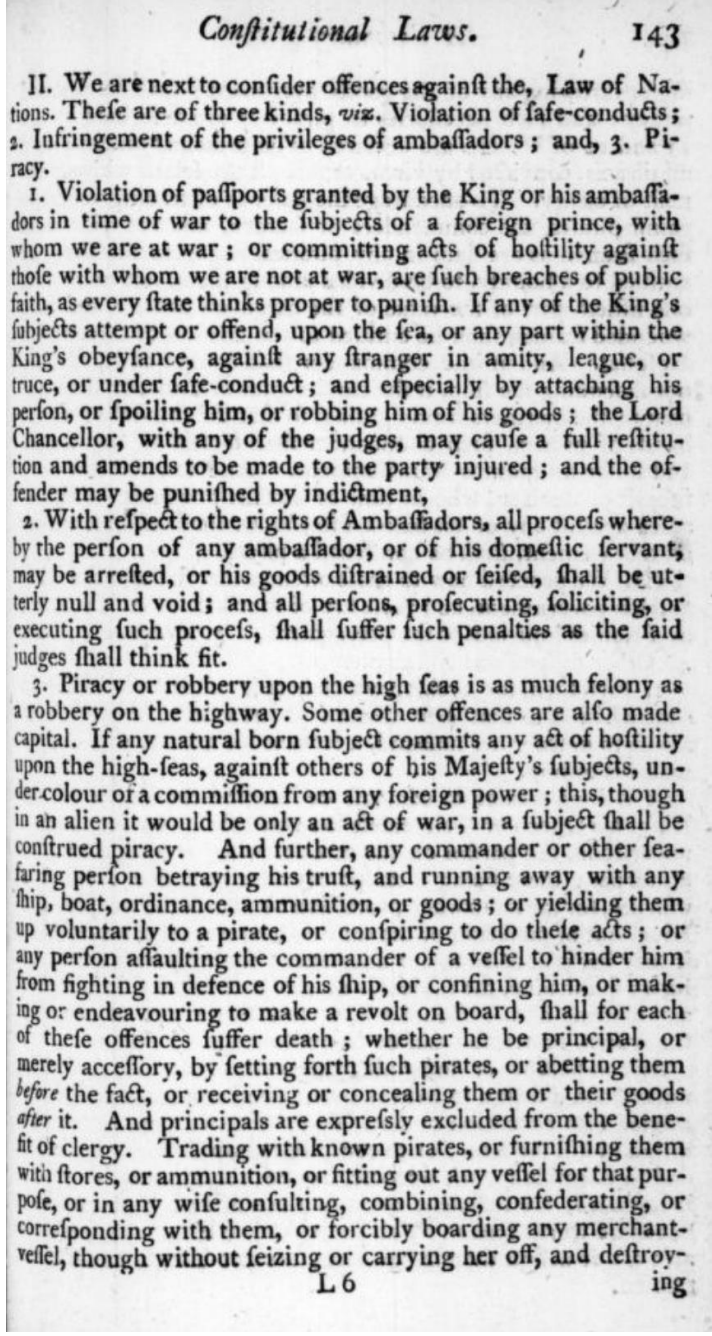
is entitled to our allegiance so that should a usurper be on the throne, the subject is excused and justified in obeying and assisting him. [the usurper]

.

Should a [usurper] King therefore resign or abdicate the crown, no treason can be committed against him.

By compassing or imagining the death of the King, &c. is understood a design to destroy him, whether such a design be carried into execution or not.

To provide weapons or ammunition to kill the King, or to conspire to imprison him by force, and to assemble for the purpose, from a presumption that worse is intended, are sufficient overt or open acts of high-treason; but mere words spoken by an individual, without any treasonable act or design then in agitation, are not held to amount to treason.



Conſtitutional Laws. 143

II. We are next to conſider offences againſt the, Law of Nations. Theſe are of three kinds, *viz.* Violation of ſafe-conducts; 2. Infringement of the privileges of ambaſſadors; and, 3. Piracy.

1. Violation of paſſports granted by the King or his ambaſſadors in time of war to the ſubjects of a foreign prince, with whom we are at war; or committing acts of hoſtility againſt thoſe with whom we are not at war, are ſuch breaches of public faith, as every ſtate thinks proper to puniſh. If any of the King's ſubjects attempt or offend, upon the ſea, or any part within the King's obeyſance, againſt any ſtranger in amity, league, or truce, or under ſafe-conduct; and eſpecially by attaching his perſon, or ſpoiling him, or robbing him of his goods; the Lord Chancellor, with any of the judges, may cauſe a full reſtitution and amends to be made to the party injured; and the offender may be puniſhed by indictment,

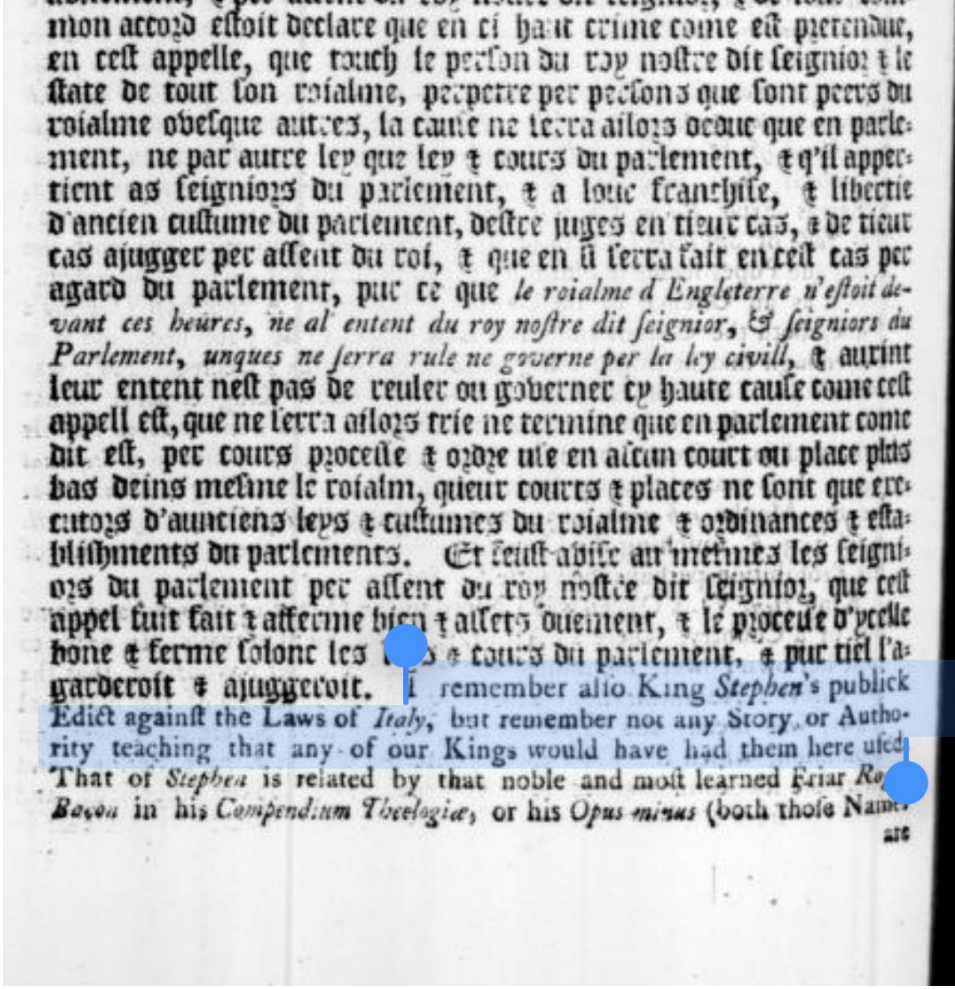
2. With reſpect to the rights of Ambaſſadors, all proceſs whereby the perſon of any ambaſſador, or of his domeſtic ſervant, may be arreſted, or his goods diſtrained or ſeiſed, ſhall be utterly null and void; and all perſons, proſecuting, ſoliciting, or executing ſuch proceſs, ſhall ſuffer ſuch penalties as the ſaid judges ſhall think fit.

3. Piracy or robbery upon the high ſeas is as much felony as a robbery on the highway. Some other offences are alſo made capital. If any natural born ſubject commits any act of hoſtility upon the high-ſeas, againſt others of his Majeſty's ſubjects, under colour of a commiſſion from any foreign power; this, though in an alien it would be only an act of war, in a ſubject ſhall be conſtrued piracy. And further, any commander or other ſeafaring perſon betraying his truſt, and running away with any ſhip, boat, ordinance, ammunition, or goods; or yielding them up voluntarily to a pirate, or conſpiring to do theſe acts; or any perſon aſſaulting the commander of a veſſel to hinder him from fighting in defence of his ſhip, or confining him, or making or endeavouring to make a revolt on board, ſhall for each of theſe offences ſuffer death; whether he be principal, or merely acceſſory, by ſetting forth ſuch pirates, or abetting them *before* the fact, or receiving or concealing them or their goods *after* it. And principals are expreſsly excluded from the benefit of clergy. Trading with known pirates, or furniſhing them with ſtores, or ammunition, or fitting out any veſſel for that purpoſe, or in any wiſe conſulting, combining, confederating, or correſponding with them, or forcibly boarding any merchant-veſſel, though without ſeizing or carrying her off, and deſtroy-

L 6 ing

https://archive.org/details/bim_eighteenth-century_a-summary-of-the-constit_blackstone-william-sir_1796

[…I remember also King Stephen's publick Edict against the Laws of Italy, but remember not any Story, or Authority teaching that any of our Kings would have had them here used…]


mon accord eſtoit declare que en ci haut crime come eſt pretendue,
en ceſt appelle, que touch le perſon du roy noſtre dit ſeignior & le
ſtate de tout ſon roialme, perpetre per perſons que ſont peers du
roialme ovelque autres, la cauſe ne ſerra aiſors oeque que en parle-
ment, ne par autre ley que ley & cours du parlement, & q'il apper-
tient as ſeigniors du parlement, & a lour franchiſe, & libertie
d'ancien cuſtume du parlement, deſtre juges en tieux cas, & de tieux
cas ajugger per aſſent du roi, & que en il ſerra fait en ceſt cas per
agard du parlement, pur ce que *le roialme d'Engleterre n'eſtoit de-
vant ces heures, ne al entent du roy noſtre dit ſeignior, & ſeigniors du
Parlement, unques ne ſerra rule ne governe per la ley civill*, & autint
leur entent neſt pas de reuler ou governer cy haute cauſe come ceſt
appell eſt, que ne ſerra aiſors trie ne termine que en parlement come
dit eſt, per cours proceſſe & ordre uſe en aſcun court ou place plus
bas deins meſme le roialm, queux courts & places ne ſont que exe-
cutors d'aunciens leys & cuſtumes du roialme & ordinances & eſta-
bliſhments du parlements. Et ceuſt aviſe au meſmes les ſeigni-
ors du parlement per aſſent du roy noſtre dit ſeignior, que ceſt
appel fuit fait & afferme bien & aſſers duement, & le proceſſe d'ycelle
bone & ferme ſolonc les [illegible] cours du parlement, & pur tiel l'a-
garderoit & ajuggeroit. I remember alſo King *Stephen*'s publick
Edict againſt the Laws of *Italy*, but remember not any Story or Autho-
rity teaching that any of our Kings would have had them here uſed.
That of *Stephen* is related by that noble and moſt learned Friar *Ro-
Bacon* in his *Compendium Theologiæ*, or his *Opus minus* (both thoſe Nam-
are

https://archive.org/details/bim_eighteenth-century_de-laudibus-legum-angli_fortescue-sir-john-chi_1775

Pg.449

(2) We turn to our second question. Did this scheme fairly represent the practice of Henry I's day? We note that it does not profess to represent the practice of Stephen's day. For legal purposes Stephen's reign is to be ignored, not because he was an usurper, but because it was a time of war and of 'unlaw.' Sixty years later this doctrine still prevails; a litigant can not rely on what happened in Stephen's reign, for it was not a time of peace'. Still, though the son of the Empress is but applying a general doctrine to a particular case, his pregnant assertion that the constitutions express his grandfather's customs seems an admission that those customs had in some particulars gone out of use under his immediate predecessor.

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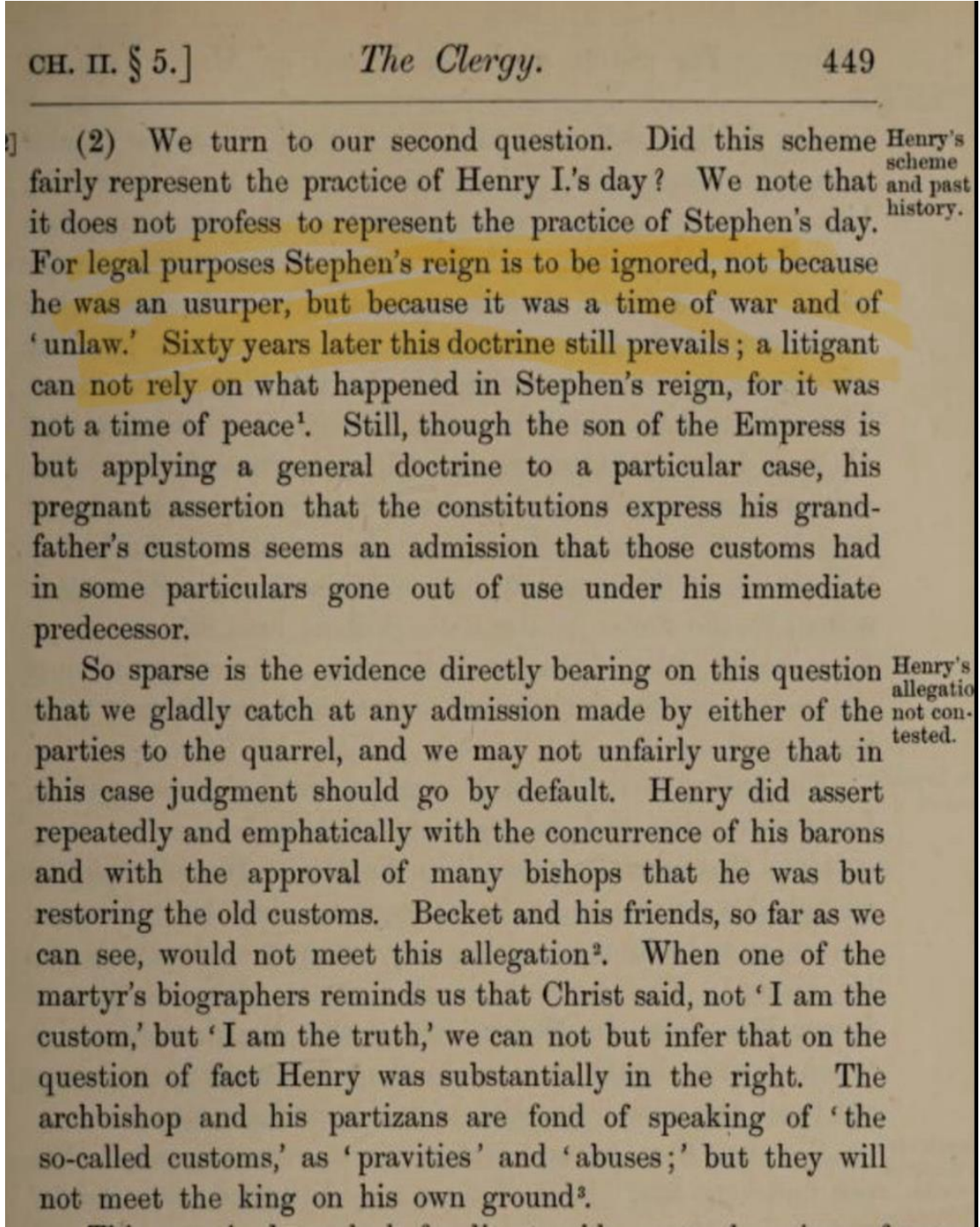

CH. II. § 5.] *The Clergy.* 449

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Henry's scheme and past history.

So sparse is the evidence directly bearing on this question that we gladly catch at any admission made by either of the parties to the quarrel, and we may not unfairly urge that in this case judgment should go by default. Henry did assert repeatedly and emphatically with the concurrence of his barons and with the approval of many bishops that he was but restoring the old customs. Becket and his friends, so far as we can see, would not meet this allegation[2]. When one of the martyr's biographers reminds us that Christ said, not 'I am the custom,' but 'I am the truth,' we can not but infer that on the question of fact Henry was substantially in the right. The archbishop and his partizans are fond of speaking of 'the so-called customs,' as 'pravities' and 'abuses;' but they will not meet the king on his own ground[3].

Henry's allegatio not con-tested.

Corportions

The crown, (it is said,) may grant to a subject the power of erecting corporations (y), though the contrary was formerly held (z). That is, it may permit the subject to name the persons and powers of the corporation at his pleasure ; but it is really the sovereign that erects, and the subject is but the instrument : for, though none but the Crown can make a corporation, yet qui faoit per o/itim, facit per se. In this manner, the Chancellor of the University of Oxford has power by charter to erect corporations ; and has actually often exerted it, in the erection of several matriculated companies of tradesmen subservient to the students.]

When a corporation is erected, a name is always given to it (a), or, supposing none to be actually given, will attach to it by implication ; [and by that name alone it must sue and be sued, and do all legal acts. Yet a very minute variation therein is not material ;] and the name is capable of being changed, by competent authority (6), without affecting the identity or capacity of the corporation in other respects (c). But some name [is the very being of its constitution ; and though it is the will of the sovereign that erects the corporation, yet the name is the knot of its combination without which it could not perform its corporate functions. The name of incorporation says Sir Coke is as a proper name or name of baptism ; and therefore when a private founder gives his college or hospital a name he does it only as a god-father; and by that same name the king baptizes the incorporation (e).

https://archive.org/details/newcommentaries04stepgoog

[*poramus*, or the like. Nay, it is held that if the crown grants to a set of men to have *gildam mercatoriam*, a mercantile meeting or assembly (*v*), this is also sufficient to incorporate and establish them for ever (*x*).

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(*v*) *Gild* signified among the Saxons a fraternity, and was derived from the verb ᵹilðan, to pay, because every man paid his share towards the expenses of the community. Such of these gilds as were commercial, gradually took the shape of our present municipal corporations; whose place of meeting, it may be observed, is still called the *Guild-hall*. Some curious information as to the Anglo-Saxon gilds or clubs will be found in Turner's Hist. Ang. Sax. vol. iii. p. 98, 6th ed.; where mention is made, among other instances, of a gild of the clergy at Canterbury, and a gild of thegns at Cambridge.

(*x*) 10 Rep. 30; 1 Roll. Ab. 513.

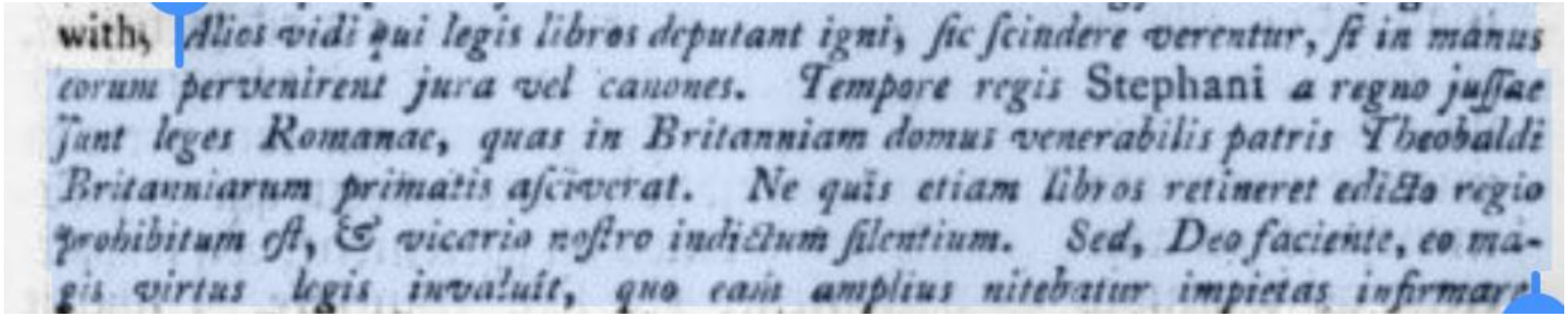
(*y*) Bro. Ab. tit. Prerog. 53; Vin. Prerog. 88, pl. 76.

(*z*) Year Book, 2 Hen. 7, 13. And see by Lord Kenyon, R. *v.* Coopers' Company, 7 T. R. 548.

(*a*) Blackstone (vol. i. p. 475) says a name *must* be given; but it appears by 1 Salk. 191, that a name of incorporation may be *implied*.

(*b*) See Queen *v.* Registrar of Joint-Stock Companies, 10 Q. B. 839.

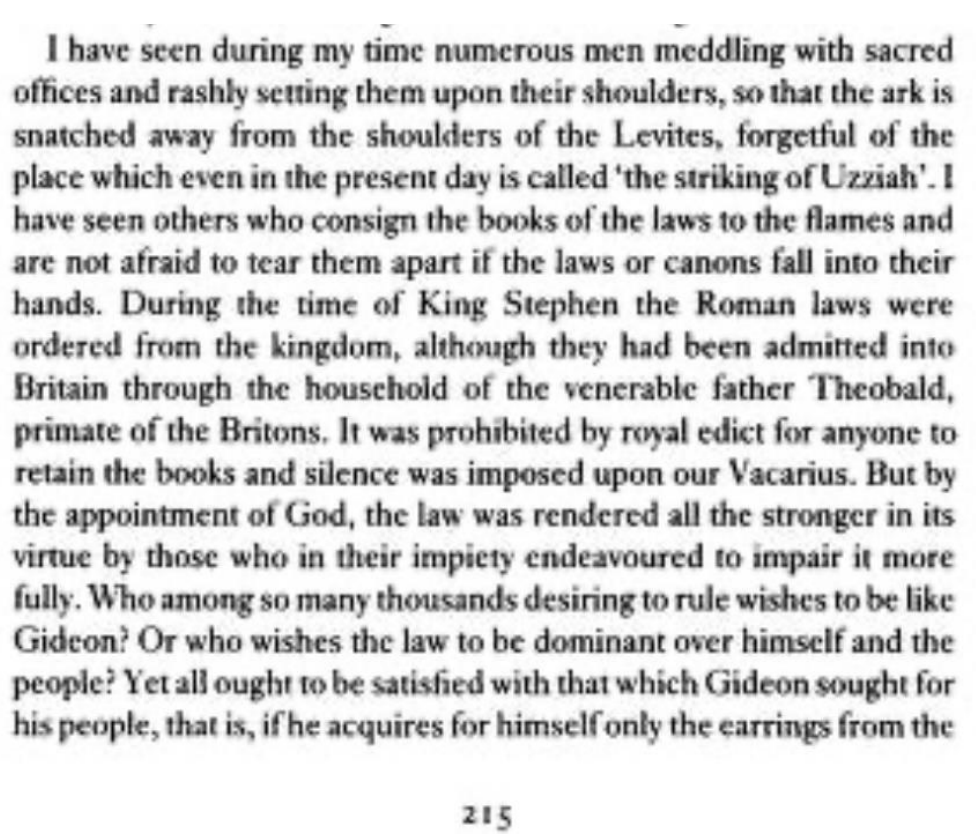
(*c*) 4 Rep. 87.


with, Alios vidi qui legis libros deputant igni, sic scindere verentur, si in manus eorum pervenirent jura vel canones. Tempore regis Stephani a regno jussae sunt leges Romanae, quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis asciverat. Ne quis etiam libros retineret edicto regio prohibitum est, & vicario nostro indictum silentium. Sed, Deo faciente, eo magis virtus legis invaluit, quo eam amplius nitebatur impietas infirmare

Pg. 115 [“..,In the time of King Stephen, Roman laws were expelled from the kingdom, which the venerable father Theobald, primate of Britain, had brought into Britain. Lest anyone hold back the books, a royal edict was issued, and a silence was imposed on our vicar…”]

https://archive.org/details/bim_eighteenth-century_de-laudibus-legum-angli_fortescue-sir-john-chi_1775

[…During the time of King Stephen the Roman laws were ordered from the kingdom, although they had been admitted into Britain through the household of the venerable father Theobald, primate of the Britons. It was prohibited by royal edict for anyone to retain the books and silence was imposed upon our Vacarius…]



I have seen during my time numerous men meddling with sacred offices and rashly setting them upon their shoulders, so that the ark is snatched away from the shoulders of the Levites, forgetful of the place which even in the present day is called 'the striking of Uzziah'. I have seen others who consign the books of the laws to the flames and are not afraid to tear them apart if the laws or canons fall into their hands. During the time of King Stephen the Roman laws were ordered from the kingdom, although they had been admitted into Britain through the household of the venerable father Theobald, primate of the Britons. It was prohibited by royal edict for anyone to retain the books and silence was imposed upon our Vacarius. But by the appointment of God, the law was rendered all the stronger in its virtue by those who in their impiety endeavoured to impair it more fully. Who among so many thousands desiring to rule wishes to be like Gideon? Or who wishes the law to be dominant over himself and the people? Yet all ought to be satisfied with that which Gideon sought for his people, that is, if he acquires for himself only the earrings from the

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The Policraticus
Written 1154-1156
By John of Salisbury
Secretary to Archbishop
Theobald of Canterbury

https://archive.org/details/john-of-salisbury-policraticus-john-of-salisbury_202301

Magna Charta

Magna Charta

The Great Charter of Liberties

Idaho Codes Annotated: Political Code
1901 (how ironic)
https://archive.org/details/idahocodesannon00id

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MAGNA CHARTA

THE GREAT CHARTER OF LIBERTIES OF KING JOHN, GRANTED AT RUNNYMEDE, JUNE 15, A. D. 1215, IN THE SEVENTEENTH YEAR OF HIS REIGN.

John, by the grace of God, King of England, Lord of Ireland, Duke of Normandy, and Acquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his Lieges, Greeting: Know ye, that we, in the presence of God, and for the salvation of our own soul, and the souls of our ancestors, and of our heirs, and unto the honor of God and the advancement of Holy Church, and amendment of our realm, by advice of our venerable Fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops; of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope, Brother Aymeric, Master of the Knights Templar in England; and of the Noble Persons, William Mareschal, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundell, Alan de Galloway, Constable of Scotland, Warin Fitz-Gerald, Peter Fitz-Herbert, and Hubert de Burgh, Seneschal of Poitou, Hugh de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip of Albany, Robert de Roppell, John Mareschal, John Fitz-Hugh, and others, our liegemen, have in the first place, granted to God, and by this our present Charter confirmed, for us and our heirs forever:

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed, that it may appear thence, that the freedom of elections which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our charter, and obtained the confirmation of the same from our Lord Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which charter we shall observe, and we do will it to be faithfully observed by our heirs forever.

2. We have also granted to all the freemen of our kingdom, for us and for our heirs forever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs, forever: If any of our earls, or barons or others, who hold of us in chief by

took the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellyn, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of Scots, concerning the restoration of his sisters and hostages, and his rights and liberties, in the same form and manner as we shall do to the rest of the barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; but this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us towards all people of our kingdom, as well clergy as laity shall observe as far as they are concerned, towards their dependents.

61. And whereas, for the honor of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed; so that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstances fail in the performance of them, towards any person, or shall break through any of these articles of peace and security and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary, if we should be out of the realm, the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person, and the persons of our queen and children; and when it is redressed they shall obey as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath

barons aforesaid, in the execution of the premises, and will distress us jointly with them, to the utmost of his power; and we give public

62. As for those of our subjects who will not, of their own ac-

Validation of Magna Charta

pg. 38 […Validation [of Ancient Customs] came, not from substance, but from procedure and form: from the personal oaths of those present at Runnymede and of men throughout the land, oaths to terms embodied in exemplars of the newly issued charter, each under the great seal.

And the crucial attack on the agreement in the papal bull of annulment was that the oath had been exacted by compulsion and that the charter was therefore null and void. That verdict was reversed when the papal legate, Guala, set his seal to the reissues of 1216 and 1217 but the threat of validity remained until in the parva carta of 1237. Henry III confirmed them in the first time in full majority.][By design or accident, a conyeyance of liberties was brought to the front of public like.

https://archive.org/details/rootsoflibertyma0000unse

Reading; and the papal "familiar" Pandulf—in their letters of September 5, 1215, in which they denounced the king's opponents asserted, "The dignity of the king has been filched, since they grant out land, a thing unheard of, and nullify the approved customs of the realm, and establish new laws, and destroy or alter all that has been prudently ordained by the King their lord with the advice of the magnates who were then his familiars—they have gone as far as they could in despoiling the King of his royal dignity."[22] For them approved customs and royal dignity went hand in hand, just as they had for Henry II in 1164. So, whatever the pretenses from whichever party in the dispute, no one could seriously maintain that the concessions of 1215 were validated by substantive coincidence with ancient custom. Validation came, not from substance, but from procedure and form: from the personal oath of the king that he would abide by the terms agreed, by similar oaths of those present at Runnymede and of men throughout the land, oaths to terms embodied in exemplars of the newly issued charter, each under the great seal. And the crucial attack on the agreement in the papal bull of annulment was that the oath had been exacted by compulsion and that the charter was therefore null and void.[23] That verdict was reversed when the papal legate, Guala, set his seal to the reissues of 1216 and 1217, but the threat to the charters' validity remained until in the *parva carta* of 1237 Henry III confirmed them for the first time in full majority. This success story owed something to luck, to Henry's minority, and to the complexities of papal diplomacy.[24] No matter. By design or accident, a conveyance of liberties was brought to the forefront of public life.

It is worth dwelling for a moment on why the settlement took this form. It had to. It could not be embodied in a treaty because king and vassals were not on a par. It was only as warring parties that they could

22. F. M. Powicke, "The bull 'Miramur plurimum' and a letter to Archbishop Stephen Langton, 5 September, 1215," *English Historical Review* 44 (1929): 92.

23. *Selected Letters of Pope Innocent III*, ed. C. R. Cheney and W. H. Semple (London, 1953), 212–16.

24. See especially V. H. Galbraith, "Runnymede Revisited," *Proceedings of the American Philosophical Society* 110 (1966): 307–17; "A Draft of Magna Carta," *Proceedings of the British Academy* 53 (1967): 345–60.

pg. 34
[...the constitutions of Clarendon of 1164..][..was not a contemporary title. It seems to be derived from a marginal entry in the earliest known manuscript version written in 1176.These "constitutions" were in fact a "record" and "recognition" made in the presence of the king of the customs, liberties and dignities enjoyed by his ancestors. Throughout the document "customs, **consuetudines**, and dignitates, not constitutions," are the dominant words.

Pg.39 [... [magna charta] could not take the form of a simple statement of **consuetudines** because other matters, the restoration of hostages and reversal of unjust judgements, for example were included. In any case how could the king be bound except by oath and solemn concession made in as near a standard form as the circumstances allowed?] [..."**spontanea et bona voluntate nostra"** was added for the first time in 1225...][it followed that the liberties concededed derived from the crown. They could be corroborated only by reissues or further confirmations, by measures which themselves reiterated the crown's authority...]So the beneficiaries of 1215 were locked into a circular logic which was not broken...]
Pg. 40 What the charter granted to the freemen of the land were not just **Consuetudines** or even liberties, but Rights or Laws, jura.]

[...It was linked to a more practical tactic of external compulsion. By his submission to Pope Innocent III in 1213 King John becane a **feodatarius.**
This opened the traditional action of **Tolt** to the **court of a feudal superior.** Both the king and his opponents used it in 1215.] [the process gave the reissues of 1216 and 1217 the seal of papal approval but not a lot besides.][From 1225, to be sure, the charters were reinforced by sentences of excommunication...] The king was careful to except royal rights and exclude ecclesiastical pretensions ...]In any case such sentences required the secular arm and ultimately royal approval..][1234, 1237, 1245, 1253, 1256, 1279] [It all helped to keep the Charter alive. And it spread knowledge of it wide within and outside the church...]

treat as equals; to do that would be to admit the compulsion which lay behind the settlement and lay it open to annulment. It could not take the form of a simple statement of *consuetudines* because other matters, the restoration of hostages and the reversal of unjust judgments, for example, were included. In any case how could the king be bound except by oath and solemn concession made in as near a standard form as the circumstances allowed? And how were liberties usually conveyed publicly and permanently unless by charter? Such considerations left any other solution unthinkable. A charter, whether confirming the earlier grant of Henry I or in some new form, was envisaged at the start of and throughout the crisis. There was no alternative: a charter it had to be. But if men turned to the charter as the only vehicle available, it was not necessarily going to be the most convenient in the long run. It was bound to be restricted to well-worn tracks. Charters provided validation, certainly, but they also brought complications and imposed conditions of their own.

A charter was freely given. It could not be otherwise. Magna Carta was granted "from reverence for God and for the salvation of our soul and those of all our ancestors and heirs, for the honour of God and the exaltation of Holy Church and the reform of our realm"; *spontanea et bona voluntate nostra* was added for the first time in 1225 because by then the young King Henry could be said to have a will of his own. It was a royal act. It followed that the liberties conceded derived from the crown. They could be corroborated only by reissues or further confirmations, by measures which themselves reiterated the crown's authority. So the beneficiaries of 1215 were locked into a circular logic which was not broken by the humiliating circumstances which forced King John to the first great surrender and his successors from time to time to renewed acts of contrition. Royal authority may have seemed to be diminished by a confirmation of the charters, but it was also exercised. The ultimate validation of the Great Charter was the Great Seal, nothing else, and that bore the impression of the king in majesty. There was no escaping that.

Nevertheless men tried. Already in 1215 the king's opponents claimed the moral high ground for themselves. The Charter specified that dispossessions had occurred without lawful judgment of peers,

Note: The Magna Charta was directed by the legislature to be inserted in this compilation, no doubt on account of its historical importance. It is one of many English constitutional documents forming the basis of our own system of jurisprudence. The four others, which, with Magna Charta are considered most important, are: Petition of Right (3 Car. I, c. 1, June 7, 1628) Habeas Corpus Act (31 Car. II, c. ii, 1679) Bill of Rights (1 W. & M. S. 2, c. 2, 1689), Act of Settlement (12 & 13, Will. III, 1700)

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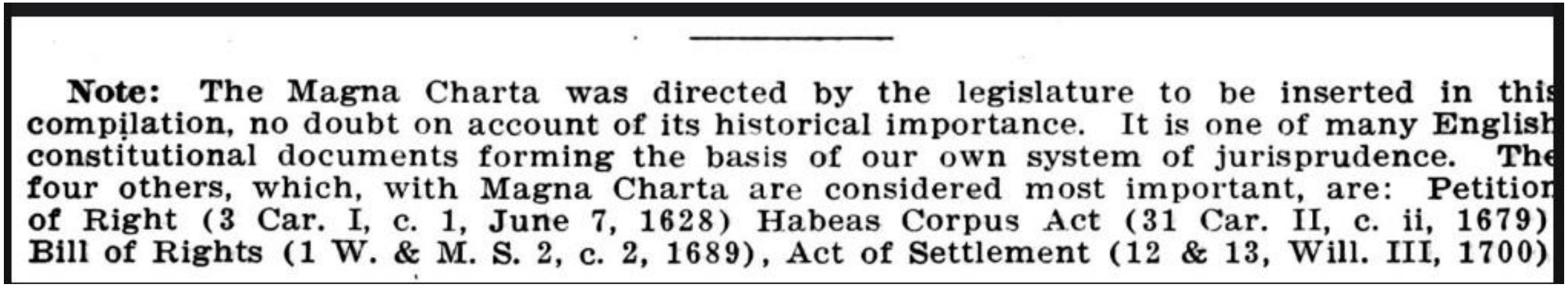

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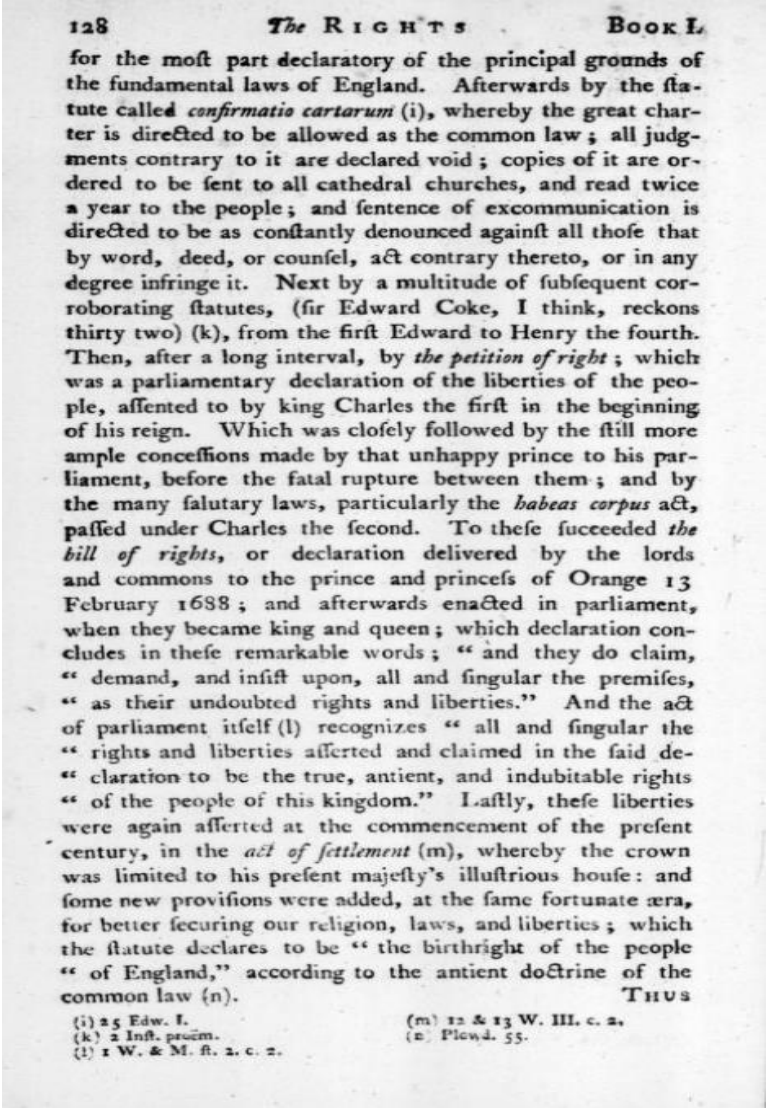
Magna charta reaffirmed 32 times Pg. 128-129

FIRST, by the great charter of liberties, which was obtained, sword in hand, from king John; and afterwards, with some alterations, confirmed in parliament by king Henry the third, his son. Which charter contained very few new grants; but, as sir Edward Coke (h) observes, was for the most part declaratory of the principal grounds of the fundamental laws of England.

Afterwards by the statute called **confirmatio cartarum** (i), **whereby the great charter is directed to be allowed as the common law; all judgments contrary to it are declared void;** copies of it are ordered to be sent to all cathedral W and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that by word, deed, or counsel a& contrary thereto, or in any degree infringe it.

Next by a multitude of subsequent corroborating statutes, (sir Edward Coke, I think, reckons - thirty two), from the first Edward to Henry the fourth. Then, after a long interval, by the petition of right ; which was a parliamentary declaration of the liberties of the people, assented to by king Charles the first in the beginning of his reign. Which was closely followed by the still more ample concessions made by that unhappy prince to his parliament.

before the fatal rupture between them; and by the many salutary laws, particularly the habeas corpus act, paſſed under Charles the second. To thess ſucceeded the bill of rights, or declaration delivered by the lords and commons to the prince and princeſs of Orange 13 February 1688; and afterwards enacted in parliament, when they became king and queen; which declaration concludes in these remarkable words; * and they do claim, & demand, and inſiſt upon, all and singular the premises, "as their undoubted rights and liberties." And the act of parliament itself recognizes " all and singular the rights and liberties asserted and claimed in the said declaration to be the true, antient, and indubitable rights & of the people of this kingdom." Lastly, these liberties were again asserted at the commencement of the present century, in the act of settlement, whereby the crown was limited to his present majesty's illustrious house: and some new provisions were added, at the same fortunate era, for better securing our religion, laws, and liberties ; which the statute declares to be the birthright of the people of England," according to the ancient doctrine of the common law.



128 *The* RIGHTS BOOK I.

for the moſt part declaratory of the principal grounds of the fundamental laws of England. Afterwards by the ſtatute called *confirmatio cartarum* (i), whereby the great charter is directed to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be ſent to all cathedral churches, and read twice a year to the people; and ſentence of excommunication is directed to be as conſtantly denounced againſt all thoſe that by word, deed, or counſel, act contrary thereto, or in any degree infringe it. Next by a multitude of ſubſequent corroborating ſtatutes, (ſir Edward Coke, I think, reckons thirty two) (k), from the firſt Edward to Henry the fourth. Then, after a long interval, by *the petition of right*; which was a parliamentary declaration of the liberties of the people, aſſented to by king Charles the firſt in the beginning of his reign. Which was cloſely followed by the ſtill more ample conceſſions made by that unhappy prince to his parliament, before the fatal rupture between them; and by the many ſalutary laws, particularly the *habeas corpus* act, paſſed under Charles the ſecond. To theſe ſucceeded *the bill of rights*, or declaration delivered by the lords and commons to the prince and princeſs of Orange 13 February 1688; and afterwards enacted in parliament, when they became king and queen; which declaration concludes in theſe remarkable words; "and they do claim, "demand, and inſiſt upon, all and ſingular the premiſes, "as their undoubted rights and liberties." And the act of parliament itſelf (l) recognizes "all and ſingular the "rights and liberties aſſerted and claimed in the ſaid de"claration to be the true, antient, and indubitable rights "of the people of this kingdom." Laſtly, theſe liberties were again aſſerted at the commencement of the preſent century, in the *act of ſettlement* (m), whereby the crown was limited to his preſent majeſty's illuſtrious houſe: and ſome new proviſions were added, at the ſame fortunate æra, for better ſecuring our religion, laws, and liberties; which the ſtatute declares to be "the birthright of the people "of England," according to the antient doctrine of the common law (n). THUS

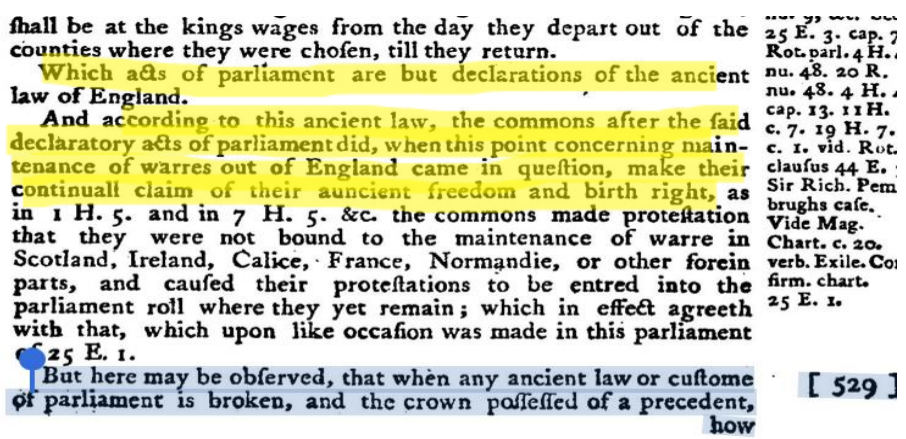
(i) 25 Edw. I.
(k) 2 Inſt. proem.
(l) 1 W. & M. ſt. 2. c. 2.
(m) 12 & 13 W. III. c. 2.
(n) Plowd. 55.

https://archive.org/details/bim_eighteenth-century_commentaries-on-the-laws_blackstone-sir-william-_1773/page/129/mode/1up

The Rights of the British colonies asserted and proved
James Otis, Esquire
1764, Pg. 56
That the colonists, black and white, born here, are free born British subjects, and entitled to all the essential]….[rights of such, is a truth not only manifest from the provincial charters, from the principles of the common
law, and acts of parliament ; but from the British constitution which
was re-established [re-affirmed] at the revolution, with a professed design to secure the liberties of all the subjects to all generations.
Pg. 106
[…**The abolute rights of Englishmen, as frequently declared in parliament, from Magna Charta to this time, are the rights of personal security , personal liberty, and of private property.**
The allegiance of British subjects being natural, perpetual and inseparable from their persons, let them be in what country they may; their rights are also natural, inherent and perpetual.
By the laws of nature and of nations, the voice of universal reason, and of God, when a nation takes possession of a desert, uncultivated and uninhabited country, or purchases of Savages, as was the case with far the greatest part of the British settlements; the colonists transplanting themselves, and their posterity, though separated from the principal establishment , or mother country, naturally become part of the state with its ancient possessions
Pg. 107
and entitled to all the essential rights of the mother country. This is not only confirmed by the practice of the ancients, but by the moderns ever since the discovery of America.
Frenchmen, Spaniards and Portuguese are no greater slaves abroad than at home; and hitherto Britons have been as free on one side of the Atlantic as on the other: And it is humbly hoped that his Majesty and the Parliament,
will in their wisdom be graciouly pleased to continue the colonists in this happy state.
It is presumed, that upon these principles, the colonists have been by their several charters declared natural subjects, and entrusted with the power of making their own local laws, not
repugnant to the laws of England.
[see also pages 7-11]
https://archive.org/details/bim_eighteenth-century_the-rights-of-the-britis_otis-james_1764

Conformatio
Confirmatio Chartarum

But here may be observed, that when any ancient law or custome of parliament is broken, and the crown possessed of a precedent, how difficult a thing it is to restore the subject again to his former freedome and safety.



shall be at the kings wages from the day they depart out of the counties where they were choſen, till they return.

Which acts of parliament are but declarations of the ancient law of England.

And according to this ancient law, the commons after the ſaid declaratory acts of parliament did, when this point concerning maintenance of warres out of England came in queſtion, make their continuall claim of their auncient freedom and birth right, as in 1 H. 5. and in 7 H. 5. &c. the commons made proteſtation that they were not bound to the maintenance of warre in Scotland, Ireland, Calice, France, Normandie, or other forein parts, and cauſed their proteſtations to be entred into the parliament roll where they yet remain; which in effect agreeth with that, which upon like occaſion was made in this parliament of 25 E. 1.

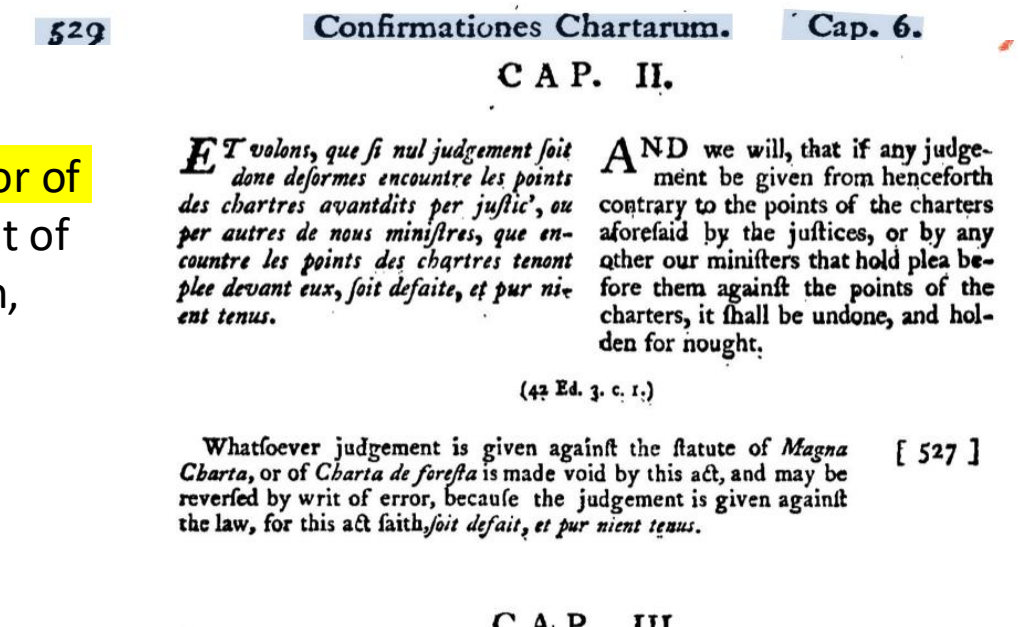
But here may be obſerved, that when any ancient law or cuſtome of parliament is broken, and the crown poſſeſſed of a precedent, how

[529]

25 E. 3. cap. 7
Rot. parl. 4 H.
nu. 48. 20 R.
nu. 48. 4 H.
cap. 13. 11 H.
c. 7. 19 H. 7.
c. 1. vid. Rot.
clauſus 44 E.
Sir Rich. Pem
brughs caſe.
Vide Mag.
Chart. c. 20.
verb. Exile. Co
firm. chart.
25 E. 1.

[...acts of parliament are but declarations of the ancient law of England.
And according to this ancient law, the commons after the said declaratory acts of parliament did, when this point concerning maintenance of warres out of England came in question, make their continuall claim
of their ancient freedom and birth right,

Whatsoever judgement is given against the statute of Magna Charta, or of Charta de foresta is made void by this act, and may be reverted by writ of error, because the judgement is given against the law, for this act saith, foit defait, et pur nient tenus.



529 Confirmationes Chartarum. Cap. 6.

CAP. II.

ET volons, que ſi nul judgement ſoit done deſormes encountre les points des chartres avantdits per juſtic', ou per autres de nous miniſtres, que encountre les points des chartres tenont plee devant eux, ſoit defaite, et pur nient tenus.

AND we will, that if any judgement be given from henceforth contrary to the points of the charters aforeſaid by the juſtices, or by any other our miniſters that hold plea before them againſt the points of the charters, it ſhall be undone, and holden for nought.

(42 Ed. 3. c. 1.)

Whatſoever judgement is given againſt the ſtatute of *Magna Charta*, or of *Charta de foreſta* is made void by this act, and may be reverſed by writ of error, becauſe the judgement is given againſt the law, for this act ſaith, *ſoit defait, et pur nient tenus.*

[527]

CAP. III.

The Second Part of the Institutes of the Laws of England, [digital pg.165]
https://archive.org/details/secondpartinsti00cokegoog

Conformatio

Confirmatio Chartarum

Le grand chartre come ley common et la chartre de la forest, en amendemens de nostre realme,"]

The Sense hereof is, **that the great charter, and the charter of the forest are to be holden for the common law**, that is, **the law common to all**;

and that both the charters are in amendment of the realm ; that is, **to amend great mischiefs and inconveniences which oppressed the whole realm before the making of them.**

See the first part of the Institutes for the antiquity and right institution of trials by twelve men, and of the number of twelve. ' Sed. 234. and Magna Charta cap. 29. This was but the abuse of the sherrife, for though the writ, which is his warrant, is but twelve, yet regularly he must returne twenty foure, and no more, unless it be in special case.

And if tie
of liberuch outad in any point of this fatute, and thercupon be couvia, da mages thail be awarded to the parties grieved, and they thall neverthelefe be amerced to the king. And juttices alligned to take affiles, when they come into the thirs, hall bave power to bear the plaints of all complainants as to the articies contained in this flatule, and to miniller juftice in forta =forcfaid, *

The Second Part of the Institutes of the Laws of England, [digital pg.81]
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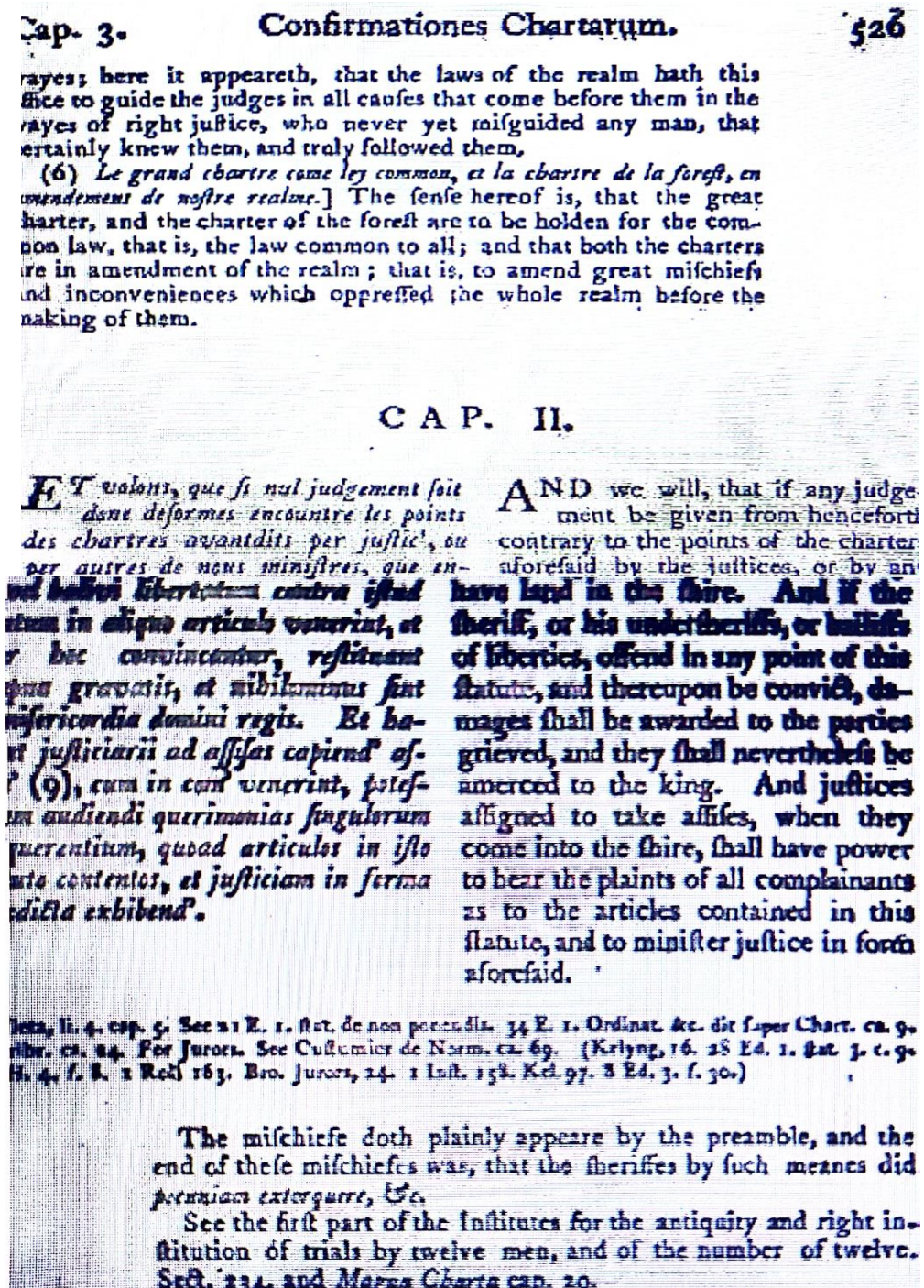


Cap. 3. Confirmationes Chartarum. 526

rayes; here it appeareth, that the laws of the realm hath this ffice to guide the judges in all cauſes that come before them in the rayes of right juſtice, who never yet miſguided any man, that ertainly knew them, and truly followed them.

(6) *Le grand chartre come ley common, et la chartre de la foreſt, en amendement de noſtre realme.*] The ſenſe hereof is, that the great harter, and the charter of the foreſt are to be holden for the com-non law, that is, the law common to all; and that both the charters re in amendment of the realm; that is, to amend great miſchiefs nd inconveniences which oppreſſed the whole realm before the naking of them.

CAP. II.

ET volons, que ſi nul judgement ſoit dane deformes encountre les points des chartres avantdits per juſtic', ou per autres de nous miniſtres, que en-

AND we will, that if any judge ment be given from henceforth contrary to the points of the charter aforefaid by the juſtices, or by an

ſoit liberum contra iſtud item in aliqua articula venerint, et hec convincantur, reſtituant ipſa gravatis, et nihilominus ſint miſericordia domini regis. Et ba- juſticiarii ad aſſiſas capiend' of- (9), cum in com venerint, poteſ- ad audiendi querimonias ſingulorum querentium, quoad articulos in iſto arta contentos, et juſticiam in ferma dicta exhibend'.

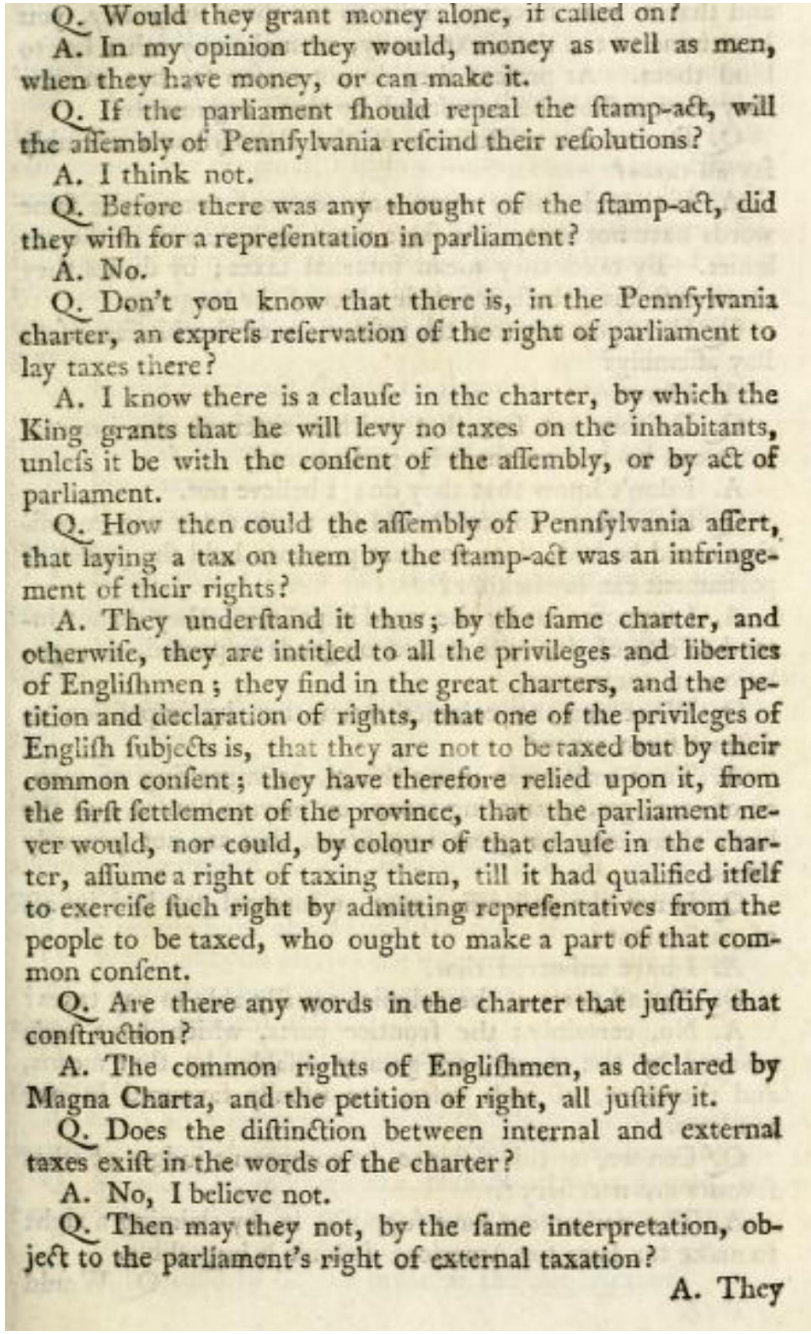
have land in the ſhire. And if the ſheriff, or his undertheriffs, or bailiffs of liberties, offend in any point of this ſtatute, and thereupon be convict, da-mages ſhall be awarded to the parties grieved, and they ſhall nevertheleſs be amerced to the king. And juſtices aſſigned to take aſſiſes, when they come into the ſhire, ſhall have power to hear the plaints of all complainants as to the articles contained in this ſtatute, and to miniſter juſtice in form aforeſaid.

ta, li. 4. cap. 5. See 21 E. 1. ſtat. de non pretendis. 34 E. 1. Ordinat. &c. dit ſuper Chart. ca. 9. ilm. ca. 24. Per Juroes. See Cuſtomer de Norm. ca. 69. (Kelyng, 16. 28 Ed. 1. ſtat. 3. c. 9. ſt. 4. f. 8. 2 Rot. 163. Bro. Juroes, 24. 1 Inſt. 158. Kel. 97. 3 Ed. 3. f. 30.)

The miſchiefe doth plainly appeare by the preamble, and the end of theſe miſchiefes was, that the ſheriffes by ſuch meanes did *pecuniam extorquere*, &c.

See the firſt part of the Inſtitutes for the antiquity and right in-ſtitution of trials by twelve men, and of the number of twelve. Sect. 234. and *Magna Charta* cap. 29.

How then could the assembly of Pennsylvania assert, that laying a tax on them by the stamp-act was an infringement of their rights? They under stand it thus; by the same charter, and otherwise, they are entitled to all the privileges and liberties of Englishmen ; they find in the great charters, and the petition and declaration of rights, that one of the privileges of English subjects is, that they are not to be taxed but by their common consent



Q. Would they grant money alone, if called on?

A. In my opinion they would, money as well as men, when they have money, or can make it.

Q. If the parliament ſhould repeal the ſtamp-act, will the aſſembly of Pennſylvania reſcind their reſolutions?

A. I think not.

Q. Before there was any thought of the ſtamp-act, did they wiſh for a repreſentation in parliament?

A. No.

Q. Don't you know that there is, in the Pennſylvania charter, an expreſs reſervation of the right of parliament to lay taxes there?

A. I know there is a clauſe in the charter, by which the King grants that he will levy no taxes on the inhabitants, unleſs it be with the conſent of the aſſembly, or by act of parliament.

Q. How then could the aſſembly of Pennſylvania aſſert, that laying a tax on them by the ſtamp-act was an infringement of their rights?

A. They underſtand it thus; by the ſame charter, and otherwiſe, they are intitled to all the privileges and liberties of Engliſhmen; they find in the great charters, and the petition and declaration of rights, that one of the privileges of Engliſh ſubjects is, that they are not to be taxed but by their common conſent; they have therefore relied upon it, from the firſt ſettlement of the province, that the parliament never would, nor could, by colour of that clauſe in the charter, aſſume a right of taxing them, till it had qualified itſelf to exerciſe ſuch right by admitting repreſentatives from the people to be taxed, who ought to make a part of that common conſent.

Q. Are there any words in the charter that juſtify that conſtruction?

A. The common rights of Engliſhmen, as declared by Magna Charta, and the petition of right, all juſtify it.

Q. Does the diſtinction between internal and external taxes exiſt in the words of the charter?

A. No, I believe not.

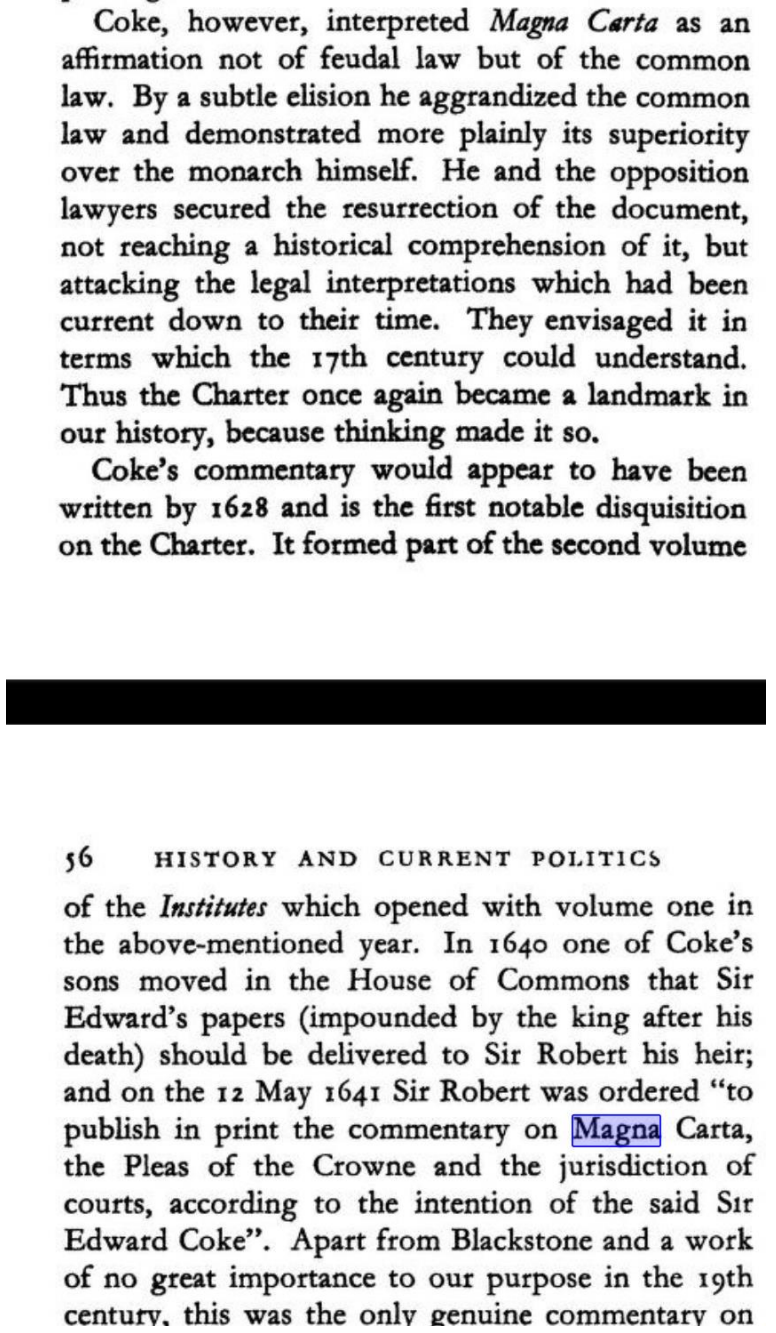
Q. Then may they not, by the ſame interpretation, object to the parliament's right of external taxation?

A. They

https://archive.org/details/historyofwarinam02dubl

[…Coke, however, interpreted Magna Carta as an affirmation not of feudal law but of the common law. By a subtle elision he aggrandized the common law and demonstrated more plainly its superiority over the monarch himself. He and the opposition lawyers secured the resurrection of the document, not reaching a historical comprehension of it, but attacking the legal interpretations which had been current down to their time. They envisaged it in terms which the 17th century could understand. Thus the Charter once again became a landmark in our history, because thinking made it so.

Coke's commentary would appear to have been written by 1628 and is the first notable disquisition on the Charter. It formed part of the second volume of the Institutes which opened with volume one in the above-mentioned year. In 1640 one of Coke's sons moved in the House of Commons that Sir Edward's papers (impounded by the king after his death) should be delivered to Sir Robert his heir; and on the 12 May 1641 Sir Robert was ordered "to publish in print the commentary on Magna Carta, the Pleas of the Crowne and the jurisdiction of courts, according to the intention of the said Sir Edward Coke".



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Coke's commentary would appear to have been written by 1628 and is the first notable disquisition on the Charter. It formed part of the second volume

56 HISTORY AND CURRENT POLITICS

of the *Institutes* which opened with volume one in the above-mentioned year. In 1640 one of Coke's sons moved in the House of Commons that Sir Edward's papers (impounded by the king after his death) should be delivered to Sir Robert his heir; and on the 12 May 1641 Sir Robert was ordered "to publish in print the commentary on Magna Carta, the Pleas of the Crowne and the jurisdiction of courts, according to the intention of the said Sir Edward Coke". Apart from Blackstone and a work of no great importance to our purpose in the 19th century, this was the only genuine commentary on

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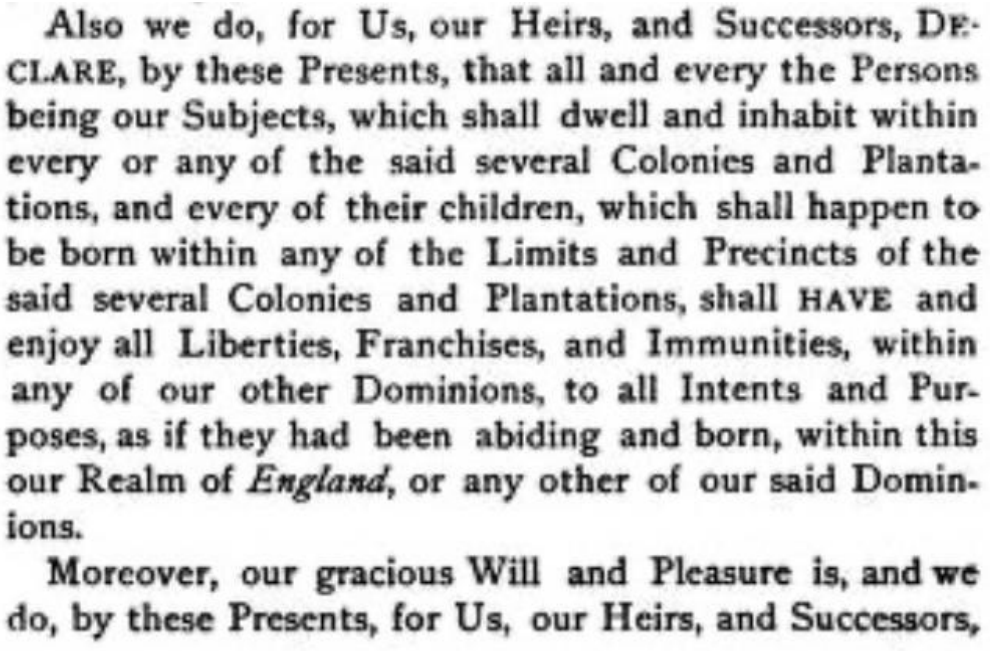
Declarations

THE FIRST CHARTER OF VIRGINIA
1606.

Also we do, for Us, our Heirs, and Successors, Declare, by these Presents, that all and every the Persons being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts of the said several Colonies and Plantations, shall HAVE and enjoy all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of England, or any other of our said Dominions.

Documents illustrative of American history, 1606-1863
Howard Preston
https://archive.org/details/documentsillust00unkngoog



Also we do, for Us, our Heirs, and Successors, DECLARE, by these Presents, that all and every the Persons being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts of the said several Colonies and Plantations, shall HAVE and enjoy all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of *England*, or any other of our said Dominions.

Moreover, our gracious Will and Pleasure is, and we do, by these Presents, for Us, our Heirs, and Successors,

Massachusetts Body Of Liberty

1641

26. Every man that findeth himselfe unfit to plead his owne cause in any Court shall have Libertie to imploy any man against whom the Court doth not except, to helpe him, Provided he give him noe fee or reward for his paines. This shall not exempt the partie him selfe from Answering such Questions in person as the Court shall thinke meete to demand of him.

[nor shall be compelled in any criminal case to be a witness against himself]

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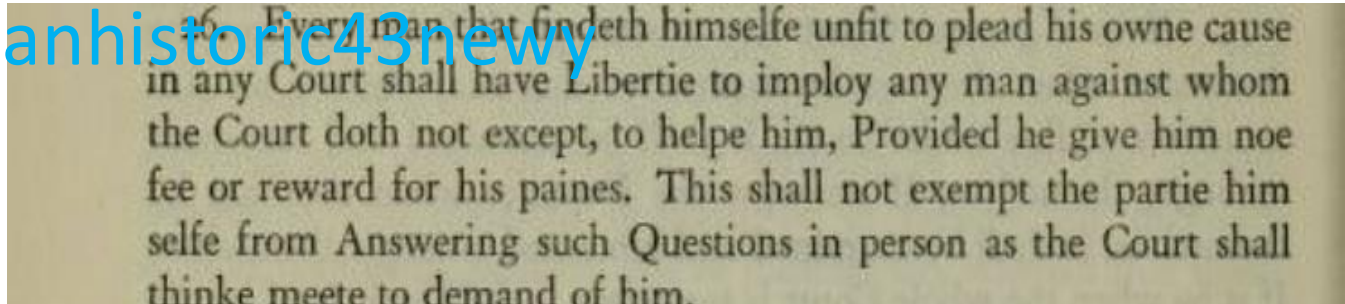
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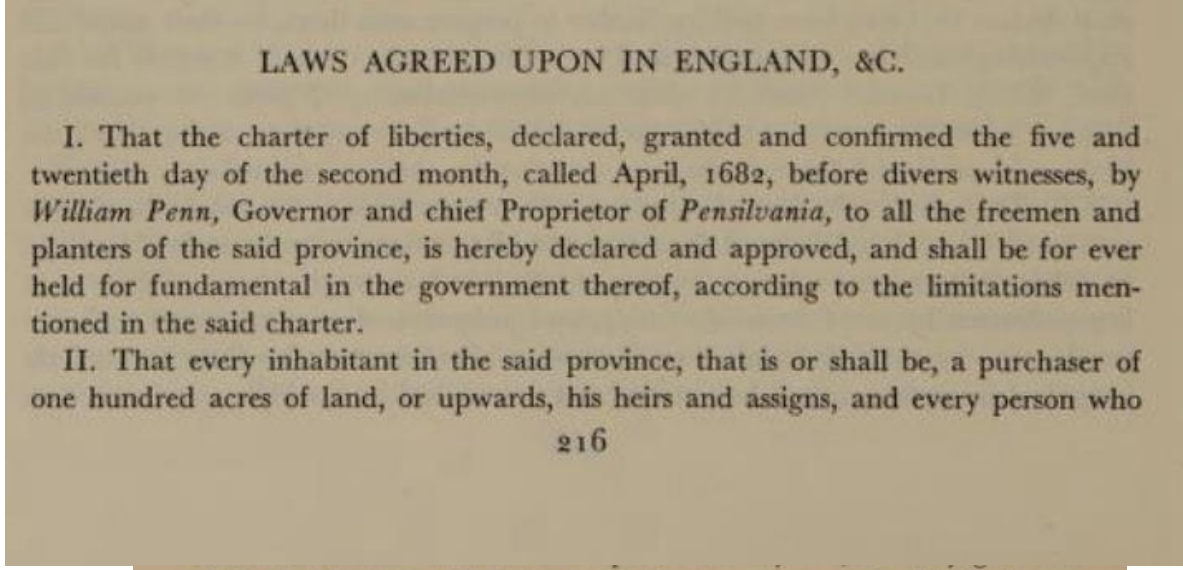
fee or reward for his paines. This shall not exempt the partie him
selfe from Answering such Questions in person as the Court shall
thinke meete to demand of him.

1682 PENNSYLVANIA
FRAME OF GOVERNMENT
OF PENNSYLVANIA
April 25, 1682
Charter of liberties approved and declared fundamental
Pg. 216
I. That the charter of liberties, declared, granted and confirmed the five and twentieth day of the second month, called April, 1682, before divers witnesses, by
William Penn, Governor and chief Proprietor of Pensilvania, to all the freemen and planters of the said province, is hereby declared and approved, and shall be for ever
held for fundamental in the government thereof, according to the limitations mentioned in the said charter.

----------<<>>----------

Pennsylvania Charter of Privileges -1701
This document, approved by William Penn, and accepted formally by the Pennsylvania Assembly, closes with a striking statement guaranteeing the inhabitants the “Liberties, Priveleges, and Benefits" stated in the Charter, any Law, Usage, or Custom of this Government heretofore made and practised, or any Law made and passed by this General Assembly, to the Contrary hereof, notwithstanding."

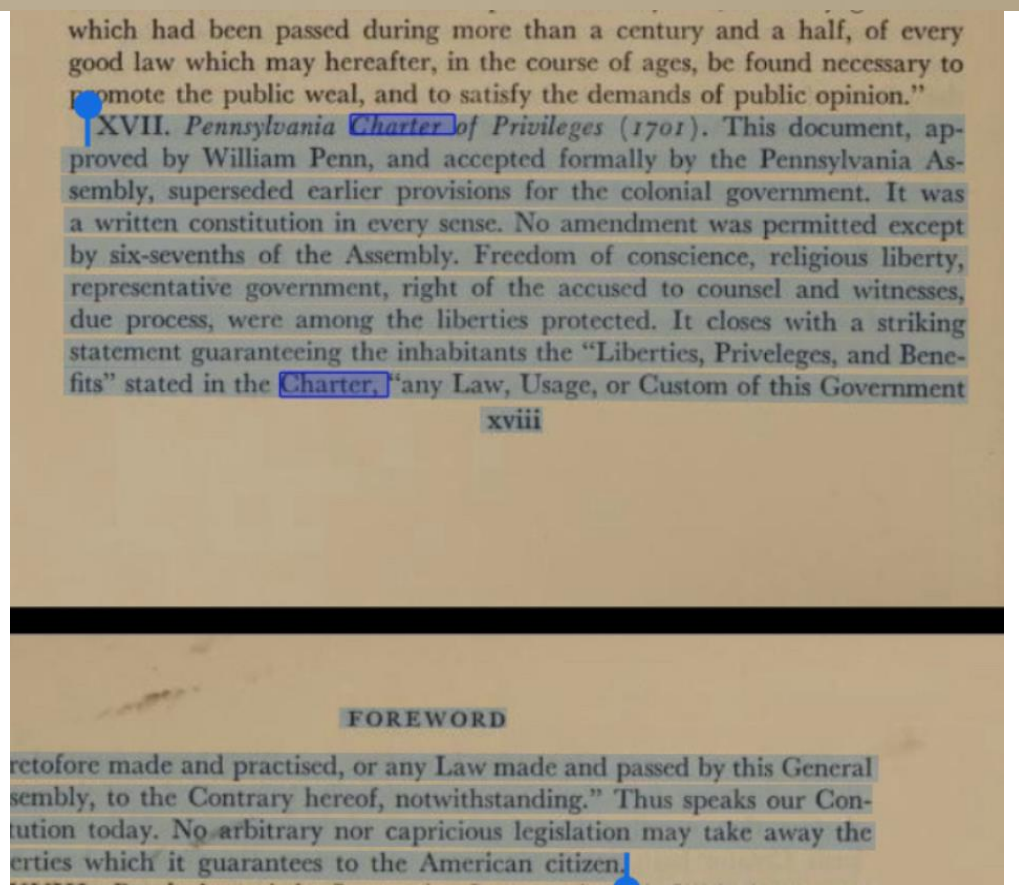


LAWS AGREED UPON IN ENGLAND, &C.

I. That the charter of liberties, declared, granted and confirmed the five and twentieth day of the second month, called April, 1682, before divers witnesses, by *William Penn*, Governor and chief Proprietor of *Pensilvania*, to all the freemen and planters of the said province, is hereby declared and approved, and shall be for ever held for fundamental in the government thereof, according to the limitations mentioned in the said charter.

II. That every inhabitant in the said province, that is or shall be, a purchaser of one hundred acres of land, or upwards, his heirs and assigns, and every person who

216



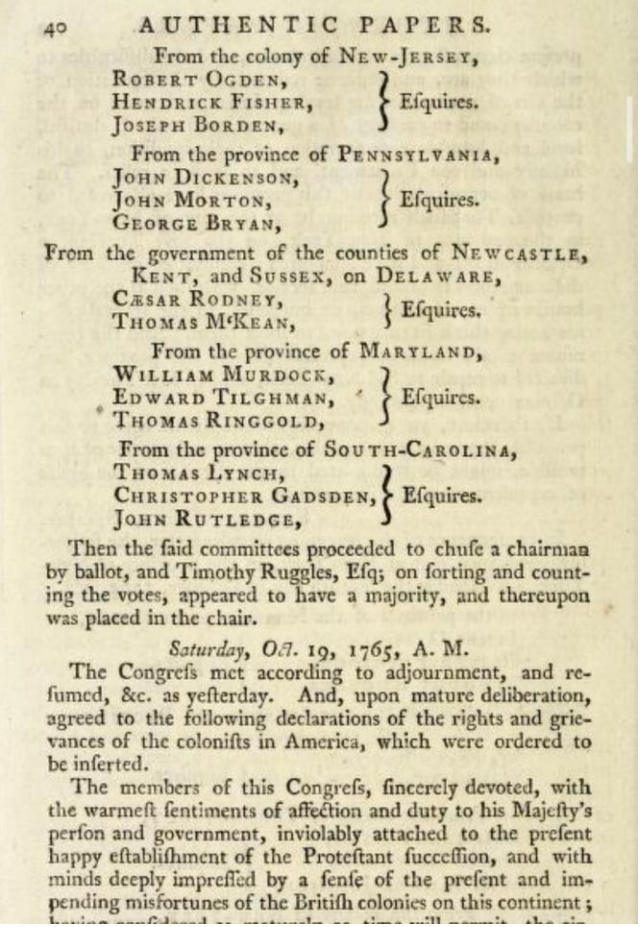
which had been passed during more than a century and a half, of every good law which may hereafter, in the course of ages, be found necessary to promote the public weal, and to satisfy the demands of public opinion."

XVII. *Pennsylvania Charter of Privileges (1701)*. This document, approved by William Penn, and accepted formally by the Pennsylvania Assembly, superseded earlier provisions for the colonial government. It was a written constitution in every sense. No amendment was permitted except by six-sevenths of the Assembly. Freedom of conscience, religious liberty, representative government, right of the accused to counsel and witnesses, due process, were among the liberties protected. It closes with a striking statement guaranteeing the inhabitants the "Liberties, Priveleges, and Benefits" stated in the Charter, "any Law, Usage, or Custom of this Government

xviii

FOREWORD

retofore made and practised, or any Law made and passed by this General sembly, to the Contrary hereof, notwithstanding." Thus speaks our Con- tution today. No arbitrary nor capricious legislation may take away the erties which it guarantees to the American citizen.



40 AUTHENTIC PAPERS.

From the colony of NEW-JERSEY,
ROBERT OGDEN,
HENDRICK FISHER,
JOSEPH BORDEN, } Eſquires.

From the province of PENNSYLVANIA,
JOHN DICKENSON,
JOHN MORTON,
GEORGE BRYAN, } Eſquires.

From the government of the counties of NEWCASTLE, KENT, and SUSSEX, on DELAWARE,
CÆSAR RODNEY,
THOMAS M'KEAN, } Eſquires.

From the province of MARYLAND,
WILLIAM MURDOCK,
EDWARD TILGHMAN,
THOMAS RINGGOLD, } Eſquires.

From the province of SOUTH-CAROLINA,
THOMAS LYNCH,
CHRISTOPHER GADSDEN,
JOHN RUTLEDGE, } Eſquires.

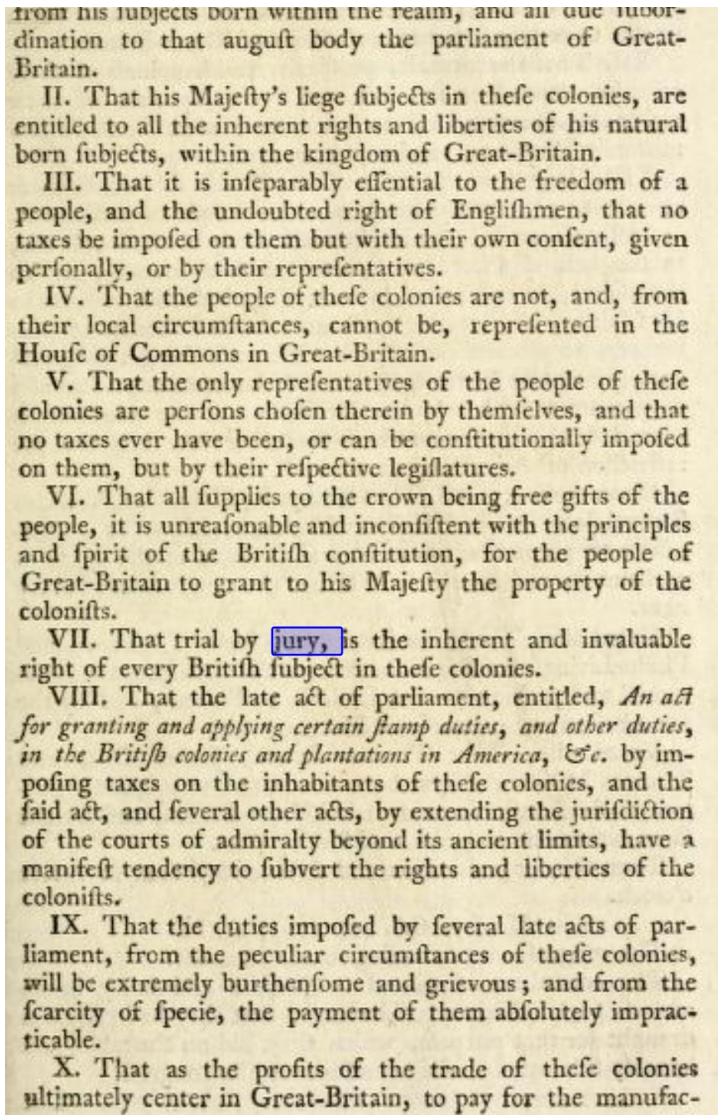
Then the ſaid committees proceeded to chuſe a chairman by ballot, and Timothy Ruggles, Eſq; on ſorting and counting the votes, appeared to have a majority, and thereupon was placed in the chair.

Saturday, Oct. 19, 1765, A. M.

The Congreſs met according to adjournment, and reſumed, &c. as yeſterday. And, upon mature deliberation, agreed to the following declarations of the rights and grievances of the coloniſts in America, which were ordered to be inſerted.

The members of this Congreſs, ſincerely devoted, with the warmeſt ſentiments of affection and duty to his Majeſty's perſon and government, inviolably attached to the preſent happy eſtabliſhment of the Proteſtant ſucceſſion, and with minds deeply impreſſed by a ſenſe of the preſent and impending misfortunes of the Britiſh colonies on this continent;

VII. That trial by jury, is the inherent and invaluable right of every British subjects in these colonies.VIII. That the late act of parliament, entitled, an act for granting and applying certain stamp duties and other duties in the British colonies and plantations in America by imposing taxes on the inhabitants of these colonies, and the said act and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists…]



from his ſubjects born within the realm, and all due ſubordination to that auguſt body the parliament of Great-Britain.

II. That his Majeſty's liege ſubjects in theſe colonies, are entitled to all the inherent rights and liberties of his natural born ſubjects, within the kingdom of Great-Britain.

III. That it is inſeparably eſſential to the freedom of a people, and the undoubted right of Engliſhmen, that no taxes be impoſed on them but with their own conſent, given perſonally, or by their repreſentatives.

IV. That the people of theſe colonies are not, and, from their local circumſtances, cannot be, repreſented in the Houſe of Commons in Great-Britain.

V. That the only repreſentatives of the people of theſe colonies are perſons choſen therein by themſelves, and that no taxes ever have been, or can be conſtitutionally impoſed on them, but by their reſpective legiſlatures.

VI. That all ſupplies to the crown being free gifts of the people, it is unreaſonable and inconſiſtent with the principles and ſpirit of the Britiſh conſtitution, for the people of Great-Britain to grant to his Majeſty the property of the coloniſts.

VII. That trial by jury, is the inherent and invaluable right of every Britiſh ſubject in theſe colonies.

VIII. That the late act of parliament, entitled, *An act for granting and applying certain ſtamp duties, and other duties, in the Britiſh colonies and plantations in America, &c.* by impoſing taxes on the inhabitants of theſe colonies, and the ſaid act, and ſeveral other acts, by extending the juriſdiction of the courts of admiralty beyond its ancient limits, have a manifeſt tendency to ſubvert the rights and liberties of the coloniſts.

IX. That the duties impoſed by ſeveral late acts of parliament, from the peculiar circumſtances of theſe colonies, will be extremely burthenſome and grievous; and from the ſcarcity of ſpecie, the payment of them abſolutely impracticable.

X. That as the profits of the trade of theſe colonies ultimately center in Great-Britain, to pay for the manufac-

1776 grievances dating back to 1765

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DECLARATION OF RIGHTS— 1765 (Continued)

Trade practices forced on the colonists inconsistent with the British constitution

representatives to be chosen by the people and from people therein
Tax imposition only from the legislature

English common law trial by jury is the inherent and invaluable right of every British subject in these colonies.

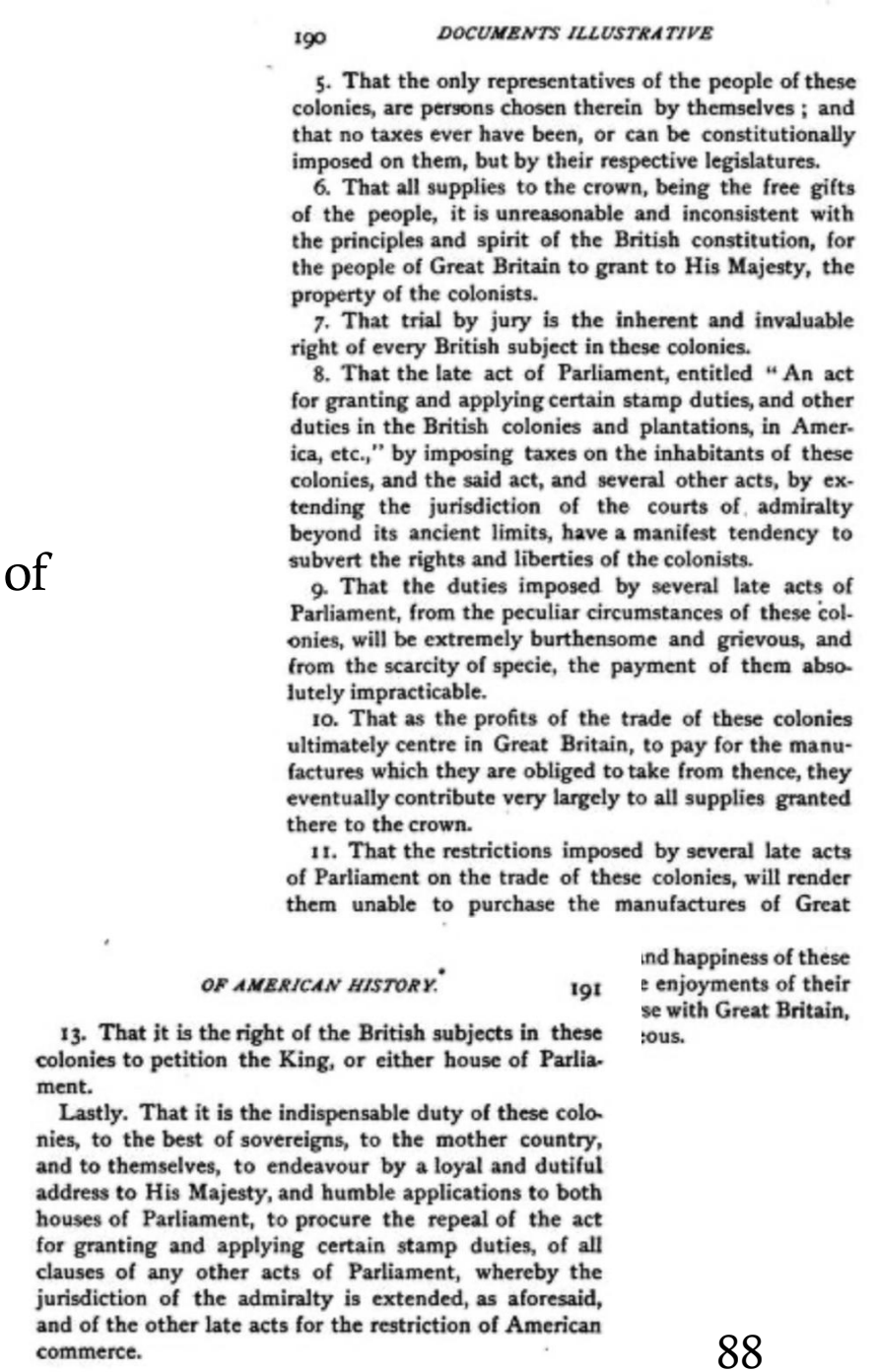
No extension of the jurisdiction of the courts of admiralty beyond its ancient limits

Imposition of taxes by scarce specie of payment

Trade practices that restricted British-Americans from British products

A Right to petition the King

https://archive.org/details/documentsillust00unkngoog



190 DOCUMENTS ILLUSTRATIVE

5. That the only representatives of the people of these colonies, are persons chosen therein by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

6. That all supplies to the crown, being the free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to His Majesty, the property of the colonists.

7. That trial by jury is the inherent and invaluable right of every British subject in these colonies.

8. That the late act of Parliament, entitled "An act for granting and applying certain stamp duties, and other duties in the British colonies and plantations, in America, etc.," by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

9. That the duties imposed by several late acts of Parliament, from the peculiar circumstances of these colonies, will be extremely burthensome and grievous, and from the scarcity of specie, the payment of them absolutely impracticable.

10. That as the profits of the trade of these colonies ultimately centre in Great Britain, to pay for the manufactures which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the crown.

11. That the restrictions imposed by several late acts of Parliament on the trade of these colonies, will render them unable to purchase the manufactures of Great

OF AMERICAN HISTORY. 191

13. That it is the right of the British subjects in these colonies to petition the King, or either house of Parliament.

Lastly. That it is the indispensable duty of these colonies, to the best of sovereigns, to the mother country, and to themselves, to endeavour by a loyal and dutiful address to His Majesty, and humble applications to both houses of Parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of Parliament, whereby the jurisdiction of the admiralty is extended, as aforesaid, and of the other late acts for the restriction of American commerce.

nd happiness of these
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se with Great Britain,
ous.

DECLARATION OF RIGHTS

(1765)

[On the passage of the Stamp Act by the British Parliament in March, 1765, requiring that all legal instruments used in the American colonies should bear a government stamp in order to be valid, delegates from nine colonies met in New York on October 7 of the same year, to protest against this and other encroachments upon their rights, and drew up this Declaration. The Stamp Act was repealed in March, 1766.]

THE members of this congress, sincerely devoted, with the warmest sentiments of affection and duty to his majesty's person and government, inviolably attached to the present happy establishment of the protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time will permit, the circumstances of the said colonies, esteem it our indispensable duty to make the following declarations of our humble opinion, respecting the most essential rights and liberties of the colonists, and of the grievances under which they labour, by reason of several late acts of parliament.

1. That his majesty's subjects in these colonies, owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm, and all due subordination to that august body the parliament of Great Britain.

2. That his majesty's liege subjects in these colonies, are entitled to all the inherent rights and liberties of his natural born subjects, within the kingdom of Great Britain.

3. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them but with their own consent, given personally, or by their representatives.

4. That the people of these colonies are not, and, from their local circumstances, cannot be, represented in the House of Commons in Great Britain.

5. That the only representatives of the people of these colonies, are persons chosen therein by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

6. That all supplies to the crown being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to his majesty the property of the colonists.

7. That trial by jury, is the inherent and invaluable right of every British subject in these colonies.

8. That the late act of parliament, entitled, an act for granting and applying certain stamp duties, and other duties, in the British colonies and plantations in America, &c., by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

9. That the duties imposed by several late acts of parliament, from the peculiar circumstances of these colonies, will be extremely burdensome and grievous; and from the scarcity of specie, the payment of them absolutely impracticable.

10. That as the profits of the trade of these colonies ultimately center in Great Britain, to pay for the manufactures which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the crown.

11. That the restrictions imposed by several late acts of parliament on the trade of these colonies, will render them unable to purchase the manufactures of Great Britain.

12. That the increase, prosperity and happiness of these colonies, depend on the full and free enjoyments of their rights and liberties, and an intercourse with Great Britain mutually affectionate and advantageous.

13. That it is the right of the British subjects in these colonies, to petition the king, or either house of parliament.

Lastly, That it is the indispensable duty of these colonies, to the best of sovereigns, to the mother country, and to themselves, to endeavour by a loyal and dutiful address to his majesty, and humble

applications to both houses of parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and of the other late acts for the restriction of American commerce.

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The New York Congress, "the Day Star of the American Union," summoned by the Massachusetts legislature, met at the City Hall in New York, Oct. 7, 1765. It .consisted of twenty-eight delegates from nine colonies, Virginia, New Hampshire, Georgia, and North Carolina being unrepresented It was much debated whether to found American liberties on natural rights or on royal charters, but the former ground was finally taken. On the 25th the delegates who were so authorized (viz., those from **Massachusetts, New Jersey, Rhode Island, Pennsylvania, Delaware and Maryland**), signed the Declaration of Rights, and the Congress adjourned. " Perhaps the best general summary of the rights and liberties asserted by all the colonies, is contained in the celebrated declaration drawn up by the Congress of the nine colonies assembled at New York, October, 1 765." (Judge Story.)

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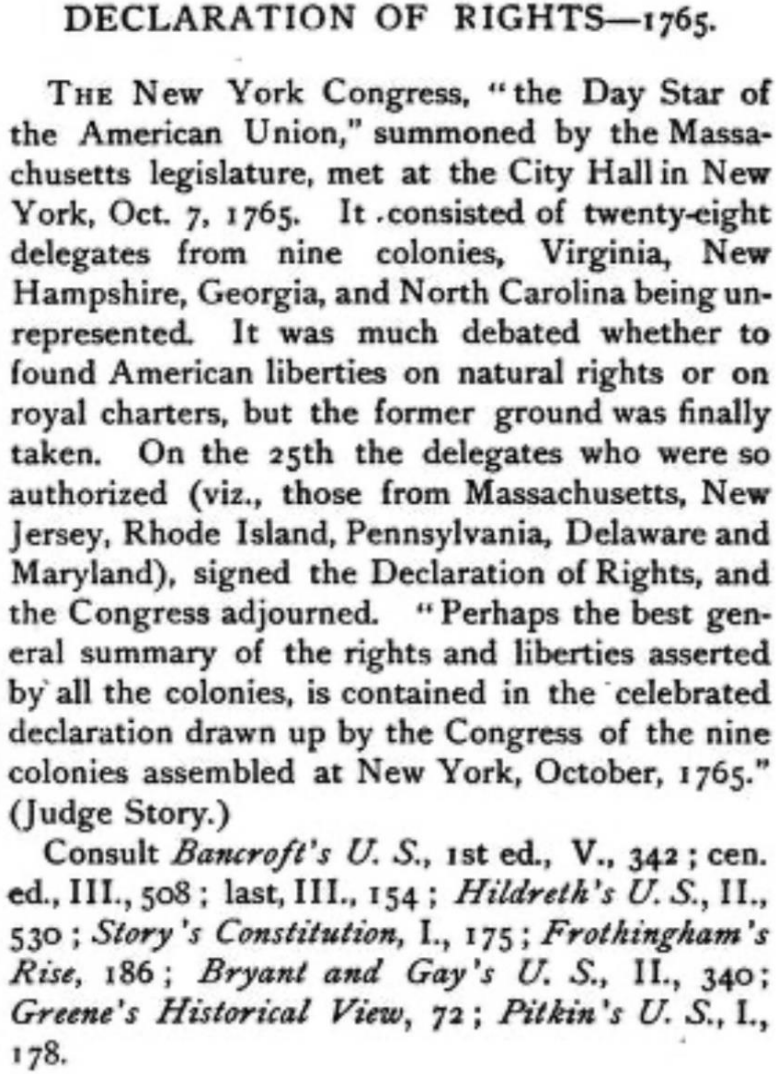

DECLARATION OF RIGHTS—1765.

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Consult *Bancroft's U. S.*, 1st ed., V., 342; cen. ed., III., 508; last, III., 154; *Hildreth's U. S.*, II., 530; *Story's Constitution*, I., 175; *Frothingham's Rise*, 186; *Bryant and Gay's U. S.*, II., 340; *Greene's Historical View*, 72; *Pitkin's U. S.*, I., 178.

DECLARATION OF RIGHTS— 1765 (Continued)

Inherent, Essential, Rights, Liberties and Grievances Declared

The Right to a Protestant succession

The Right to no tax imposition but with their consent

taxation only by personal representatives

Representation condusive to their circumstances

https://archive.org/details/documentsillust00unkngoog

RESOLVES OF THE CONVENTION OF THE ENGLISH COLONIES AT NEW YORK, OCTOBER 19, 1765.

THE Congress upon mature deliberation, agreed to the following declarations of the rights and grievances of the colonists in America:

The members of this congress, sincerely devoted, with the warmest sentiments of affection and duty, to His Majesty's person and government, inviolably attached to the present happy establishment of the Protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time will permit, the circumstances of the said colonies, esteem it our indispensable duty to make the following declarations of our humble opinion respecting the most essential rights and liberties of the colonists and of the grievances under which they labor by reason of the several late acts of Parliament.

1. That His Majesty's subjects in these colonies, owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm; and all due subordination to that august body, the Parliament of Great Britain.

2. That His Majesty's liege subjects in these colonies, are entitled to all the inherent rights and liberties of his natural born subjects within the kingdom of Great Britain.

3. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them but with their own consent, given personally, or by their representatives.

4. That the people of these colonies are not, and from their local circumstances cannot be, represented in the House of Commons, in Great Britain.

DECLARATION OF RIGHTS.

In Congress, at Philadelphia, October 14, 1774.

WHEREAS, Since the close of the last war, the British Parliament, claiming a power of right to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, and in others, under various pretenses, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these Colonies, established a board of commissioners with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.

AND WHEREAS, In consequence of other statutes, Judges, who before held only estates at will in their offices, have been made dependent on the Crown alone for their salaries, and standing armies kept in times of peace.

AND WHEREAS, It has lately been resolved in Parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the Colonies, and by a late statute, such trials have been directed in cases therein mentioned.

AND WHEREAS, In the last session of Parliament three statutes were made: one entitled "An Act to discontinue, in such manner and for such time as are therein mentioned, the landing and discharging, lading or shipping of goods, wares and merchandise, at the town, and within the harbor of Boston, in the province of Massachusetts Bay, in North America"; another, entitled "An Act for the better regulating the government of the province of Massachusetts Bay, in New England"; and another, entitled "An Act for the impartial administration of justice, in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults, in the province of Massachusetts Bay, in New England"; and another statute

16

Whereupon, the deputies so appointed being now assembled, in a full and free representation of these Colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for effecting and vindicating their rights and liberties, DECLARE:

That the inhabitants of the English Colonies in North America, by the immutable laws of nature, the principles of the English Constitution, and the several Charters or Compacts, have the following RIGHTS :

Resolved, 1. That they are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever & right to dispose of either without their consent.

Resolved, 2. That our ancestors, who first settled these Colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects within the realm of England.

Resolved, 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.

Resolved, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their

was then made, "for making more effectual provision for the government of the province of Quebec, etc." All which statutes are impolitic, unjust and cruel, as well as unconstitutional, and most dangerous and destructive of American rights.

AND WHEREAS, Assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the Crown for redress, have been repeatedly treated with contempt by his Majesty's Ministers of State:

The good people of the several colonies of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, New Castle, Kent and Sussex on Delaware, Maryland, Virginia, North Carolina, and South Carolina, justly alarmed at these arbitrary proceedings of Parliament and Administration, have severally elected, constituted, and appointed deputies to meet, and sit in General Congress, in the City of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties may not be subverted. Whereupon, the deputies so appointed being now assembled, in a full and free representation of these Colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for effecting and vindicating their rights and liberties, DECLARE:

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Resolved, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their

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DECLARATION OF RIGHTS

[…legislative council : and as the English Colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British Parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their Sovereign, in such manner as has heretofore been used and accustomed. But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British Parliament, as are bona fitfe, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America, without their consent.

Resolved, 5. That the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Resolved, 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization ; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Resolved, 7. That these, his Majesty's Colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by Royal Charters, or secured by their several codes of Provincial Laws

.Resolved, 8. That they have a right peaceably to assemble, consider their grievances, and petition the King ; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

Resolved, 9. That the keeping a standing army in these Colonies, in times of peace, without the consent of the Legislature of that Colony, in which such army is kept, is against law.

Resolved, 10. It is indispensably necessary to good government, and rendered essential by the English Constitution, that the constituent branches of the legislature be independent of each other ; that, therefore, the exercise of legislative power in several Colonies, by a Council appointed during the pleasure of the Crown, is unconstitutional, dangerous, and destructive to the freedom of American legislation.

legislative council: and as the English Colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British Parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their Sovereign, in such manner as has heretofore been used and accustomed. But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British Parliament, as are *bona fide*, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America, without their consent.

Resolved, 5. That the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Resolved, 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Resolved, 7. That these, his Majesty's Colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by Royal Charters, or secured by their several codes of Provincial Laws.

Resolved, 8. That they have a right peaceably to assemble, consider their grievances, and petition the King; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

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Also 12 Geo. III. ch. 24, entitled •' An Act for the better securing his Majesty's dock yards, magazines, ships, ammunition and stores," which declares a new offense in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person, charged with the committing any offense described in the said Act, out of the realm, to be indicted and tried for the same in any shire or county within the realm.Also the three Acts passed in the last session of Parliament, for stopping the port and blocking up the harbor of Boston, for altering the Charter and Government of Massachusetts Bay, and that which is entitled "An Act for the better administration of justice," etc.Also the Act, passed in the same session, for establishing the Roman Catholic religion in the province of Quebec, abolishing the equitable system of English Laws, and erecting a tyranny there,

All, and each of which, the aforesaid Deputies, in behalf of themselves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties, which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent, by their Representatives in their several Provincial Legislatures.

In the course of our inquiry, we find many infringements and violations of the foregoing rights, which, from an ardent desire that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the late war, which demonstrate a system formed to enslave America.

Resolved, That the following Acts of Parliament are infringements and violations of the rights of the Colonists; and that the repeal of them is essentially necessary in order to restore harmony between Great Britain and the American Colonies, viz.:

The several Acts of 4 Geo. III. ch. 15, and ch. 34.—5 Geo. III. ch. 25.—6 Geo. III. ch. 52.—7 Geo. III. ch. 41, and ch. 46.—8 Geo. III. ch. 22, which impose duties for the purpose of raising a revenue in America, extend the power of the Admiralty Courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judges' certificate to indemnify the prosecutor from damages, that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized, before he shall be allowed to defend his property, and are subversive of American rights.

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Also the Act, passed in the same session, for establishing the Roman Catholic religion in the province of Quebec, abolishing the equitable system of English Laws, and erecting a tyranny there,

to the great danger (from so total a dissimilarity of religion, law and government) of the neighboring British Colonies, by the assistance of whose blood and treasure the said country was conquered from France.

Also the Act, passed in the same session, for the better providing suitable quarters for officers and soldiers in his Majesty's service, in North America.

Also, that the keeping a standing army in several of these Colonies, in time of peace, without the consent of the Legislature of that Colony in which such army is kept, is against law.

To these grievous acts and measures Americans cannot submit, but in hopes their fellow subjects in Great Britain will, on a revision of them, restore us to that state, in which both countries found happiness and prosperity, we have, for the present, only resolved to pursue the following peaceable measures:

1. To enter into a non-importation, non-consumption, and non-exportation agreement or association.

2. To prepare an address to the people of Great Britain, and a memorial to the inhabitants of British America.

3. To prepare a loyal address to his Majesty, agreeable to resolutions already entered into.

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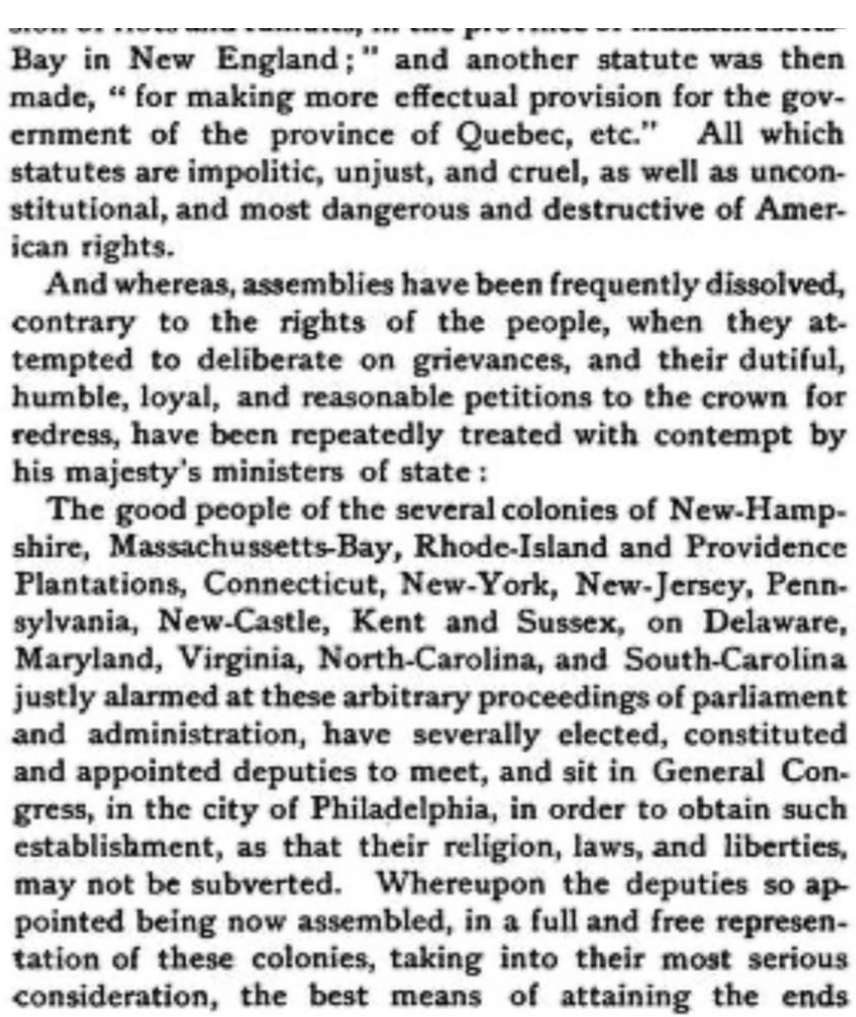
"AMERICAN RIGHTS"

DECLARATION OF RIGHTS-1774. Pg.194

[continued] statutes are impolitic..] […unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights.

And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances, and their dutiful, humble, loyal, and reasonable petitions to the crown for redress, have been repeatedly treated with contempt by his majesty's ministers of state:

The good people of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Penn-sylvania, New-Castle, Kent and Sussex, on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina justly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted and appointed deputies to meet, and sit in General Con-gress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted.]



Bay in New England;" and another statute was then made, "for making more effectual provision for the government of the province of Quebec, etc." All which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights.

And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances, and their dutiful, humble, loyal, and reasonable petitions to the crown for redress, have been repeatedly treated with contempt by his majesty's ministers of state:

The good people of the several colonies of New-Hampshire, Massachussetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, New-Castle, Kent and Sussex, on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina justly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted and appointed deputies to meet, and sit in General Congress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted. Whereupon the deputies so appointed being now assembled, in a full and free representation of these colonies, taking into their most serious consideration, the best means of attaining the ends

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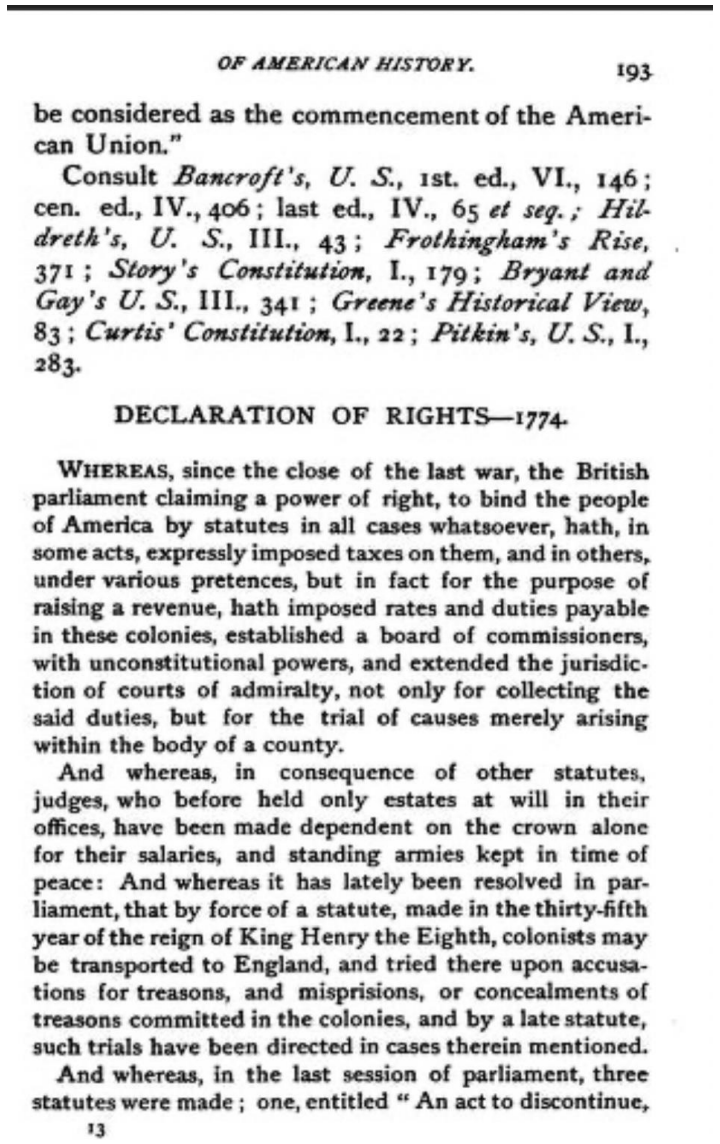
DECLARATION OF RIGHTS-1774. Pg.193

WHEREAS, since the close of the last war, the British parliament claiming a power of right, to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, and in others, under various pretences, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies, established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.

And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependent on the crown alone for their salaries, and standing armies kept in time of peace: And whereas it has lately been resolved in par-liament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons, and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned.

And whereas, in the last session of parliament, three statutes were made; one, entitled " An act to discontinue,



be considered as the commencement of the American Union."

Consult *Bancroft's, U. S.*, 1st. ed., VI., 146; cen. ed., IV., 406; last ed., IV., 65 *et seq.*; *Hildreth's, U. S.*, III., 43; *Frothingham's Rise*, 371; *Story's Constitution*, I., 179; *Bryant and Gay's U. S.*, III., 341; *Greene's Historical View*, 83; *Curtis' Constitution*, I., 22; *Pitkin's, U. S.*, I., 283.

DECLARATION OF RIGHTS—1774.

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Virginia Declaration Of Rights

"The BASIS and FOUNDATION of All government"

Charles Francis Adams, ed. The Works of John Adams, vol. 9

June 9, 1776

[...We are in the very midst of a revolution, the most complete, unexpected, and remarkable, of any in the history of nations. A few important subjects must be despatched before I can return to my family. Every colony must be induced to institute a perfect government. All the colonies must confederate together in some solemn band of union.

The Congress must declare the colonies free and independent States, and ambassadors must be sent abroad to foreign courts, to solicit their acknowledgment of us, as sovereign States, and to form with them, at least with some of them, commercial treaties of friendship and alliance, When these things are once completed, I shall think that I have answered the end of my creation, and sing my nunc dimittis, return to my farm, family, ride circuits, plead law, or judge causes, just which you please.

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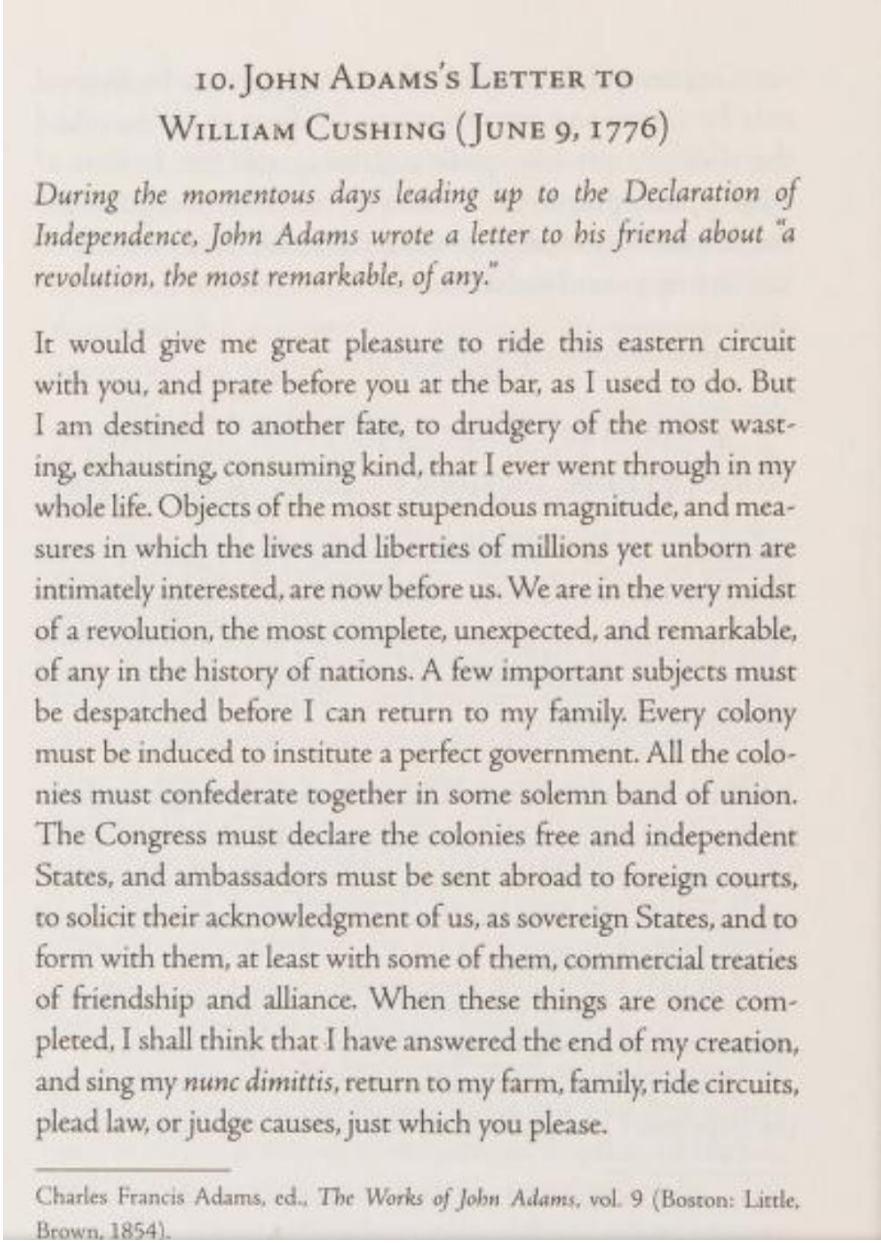

10. John Adams's Letter to William Cushing (June 9, 1776)

During the momentous days leading up to the Declaration of Independence, John Adams wrote a letter to his friend about "a revolution, the most remarkable, of any."

It would give me great pleasure to ride this eastern circuit with you, and prate before you at the bar, as I used to do. But I am destined to another fate, to drudgery of the most wasting, exhausting, consuming kind, that I ever went through in my whole life. Objects of the most stupendous magnitude, and measures in which the lives and liberties of millions yet unborn are intimately interested, are now before us. We are in the very midst of a revolution, the most complete, unexpected, and remarkable, of any in the history of nations. A few important subjects must be despatched before I can return to my family. Every colony must be induced to institute a perfect government. All the colonies must confederate together in some solemn band of union. The Congress must declare the colonies free and independent States, and ambassadors must be sent abroad to foreign courts, to solicit their acknowledgment of us, as sovereign States, and to form with them, at least with some of them, commercial treaties of friendship and alliance. When these things are once completed, I shall think that I have answered the end of my creation, and sing my *nunc dimittis*, return to my farm, family, ride circuits, plead law, or judge causes, just which you please.

Charles Francis Adams, ed., *The Works of John Adams*, vol. 9 (Boston: Little, Brown, 1854).

June 12, 1776

DECLARATION OF RIGHTS

On May 15, 1776, the Virginia Convention passed two resolutions. The first directed Virginia delegates to the Continental Congress to propose an official declaration of independence for the thirteen colonies. The second appointed a committee to draft a Declaration of Rights. Primarily written by George Mason, the final draft was adopted June 12 and influenced not only the Declaration of Independence, but later the Bill of Rights.

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention;

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The Declaration of the Rights of Man and of citizen- Georg Jellinek
[...The constitutions of the separate states, however, were preceded by declarations of rights, which were binding upon the people's representatives.

The first state to set forth a declaration of rights properly so called was Virginia..]
declarations of rights, the principles of which were to serve as rules for the representatives of the people, either to conventions, or in other exercises of their powers. Virginia was the first to produce a proper bill of rights.
Says I bid. , p. 47]
[...Mais les constitution que se donnérent successivement les treize état, furent précedees de declarations des droits, dont les principes devaient servir de regles aux representans du peuple, soit aux conventions, soit dans les autres exercises de leur pouvoirs . La Virginie fut la premiere a produire une declaration des droits proprement
dite. -I bid. , p. 47
But the constitutions that the thirteen states successively gave themselves were preceded by declarations of rights, the principles of which were to serve as rules for the representatives of the people, either at conventions or in other exercises of their powers. Virginia was the first to produce a proper bill of rights
https://iuristebi.wordpress.com/wp-content/uploads/2011/07/the-declaration-of-the-rights.pdf#page7

The constitutions of the separate states, however, were preceded by declarations of rights, which were binding upon the people's representatives. *The first state to set forth a declaration of rights properly so called was Virginia.*[9]

The declarations of Virginia and of the other individual American states were the sources of Lafayette's proposition. They influenced not only Lafayette, but all who sought to bring about a declaration of rights. Even the above-mentioned *cahiers* were affected by them.

The new constitutions of the separate American states were well known at that time in France. As early as 1778 a French translation of them, dedicated to Franklin, had appeared in Switzerland.[10] Another

[9] "Mais les constitutions que se donnèrent successivement les treize états, furent précedées de déclarations des droits, dont les principes devaient servir de règles aux représentans du peuple, soit aux conventions, soit dans les autres exercises de leur pouvoirs. La Virginie fut la première à produire une déclaration des droits proprement dite."—*Ibid.*, p. 47.

[10] *Recueil des loix constitutives des colonies angloises, confédérées sous la dénomination d'États-*

Status	•Proprietary colony (1606–1624) •Crown colony (1624–1776)
Religion	Church of England (Anglican)

https://en.wikipedia.org/wiki/Colony_of_Virginia

SEC. 8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

[This declaration of 1669 Fundamental Constitutions of Carolina violates the Ancient Right of Trial By Jury ..The Virginia Declaration of Rights 1776 merely reaffirms what The common law already dictates, UNANIMOUS CONSENT]

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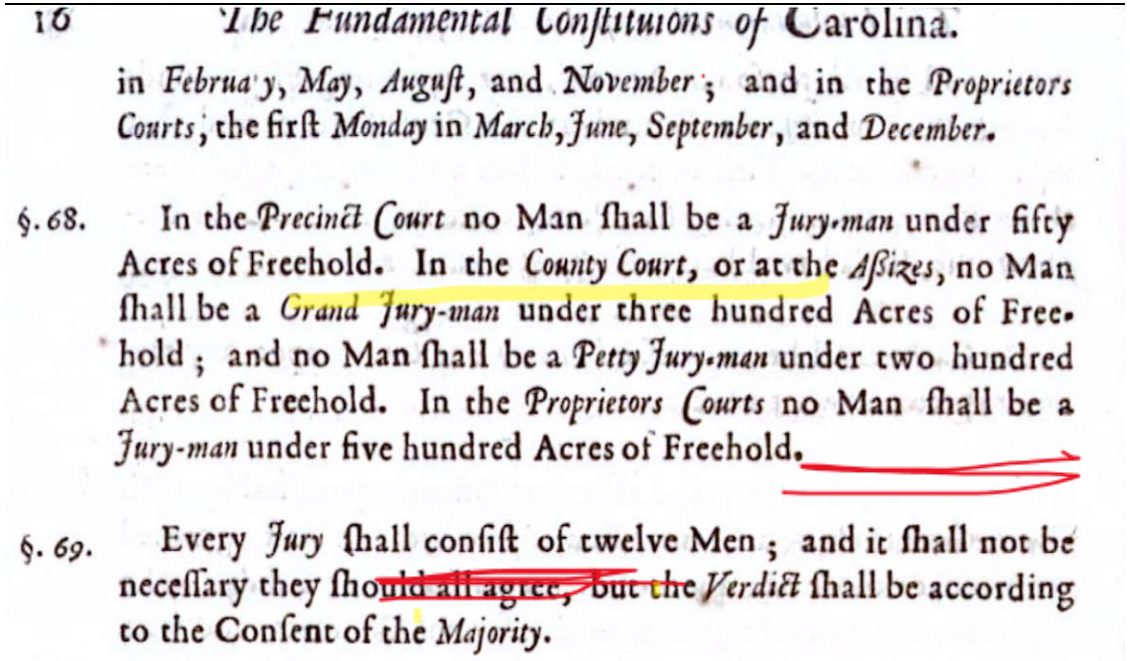

16 *The Fundamental Conſtitutions of* Carolina.

in *Februa'y*, *May*, *Auguſt*, and *November*; and in the *Proprietors Courts*, the firſt *Monday* in *March*, *June*, *September*, and *December*.

§. 68. In the *Precinct Court* no Man ſhall be a *Jury-man* under fifty Acres of Freehold. In the *County Court*, or at the *Aſſizes*, no Man ſhall be a *Grand Jury-man* under three hundred Acres of Freehold; and no Man ſhall be a *Petty Jury-man* under two hundred Acres of Freehold. In the *Proprietors Courts* no Man ſhall be a *Jury-man* under five hundred Acres of Freehold.

§. 69. Every *Jury* ſhall conſiſt of twelve Men; and it ſhall not be neceſſary they ſhould all agree, but the *Verdict* ſhall be according to the Conſent of the *Majority*.

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[...In England, in both civil and criminal cases, the verdict of the jury must be unanimous...]

being lawyers, but believing as men believe, and act on their belief, in the ordinary affairs of life, give them a capacity of aiding the court, in the eliciting of truth, which no single judge, be he ever so largely gifted with mental endowments, be he ever so learned with respect to past experience in such matters, can possess in dealing with either of those two matters."

[In England, in both civil and criminal cases, the verdict of the jury must be unanimous; in Scotland, the verdict may, in a criminal case, be pronounced by a majority, the

[In the year 1825, the laws relative to the qualification and summoning of juries, and the formation of juries, in England and Wales, being found very numerous and complicated, they were consolidated and simplified by statute 6 Geo. IV. c. 60. The first and second sections contain respectively the qualifications of jurors, and exemptions from serving on them.

[In the Year 1825] [...being found very numerous and complicated, they were consolidated and simplified..] You will see this reason for CODIFICATION & ABROGATION of your Rights time and time again.

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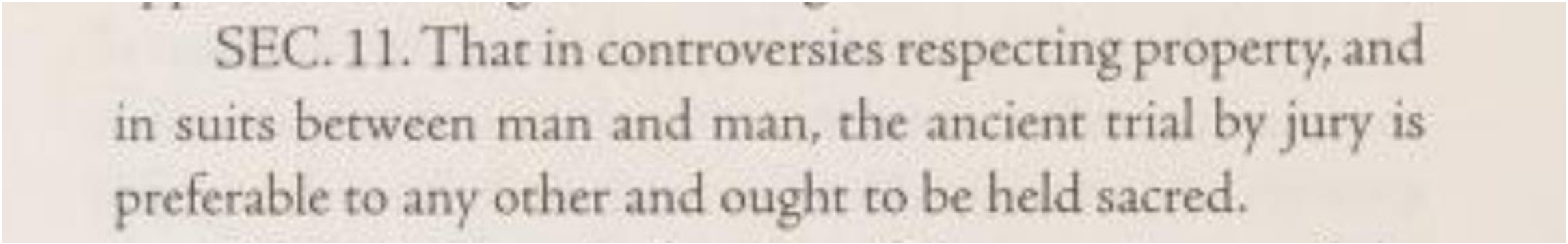
SEC. 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred.

[…the ancient trial by jury is preferable to any other..]

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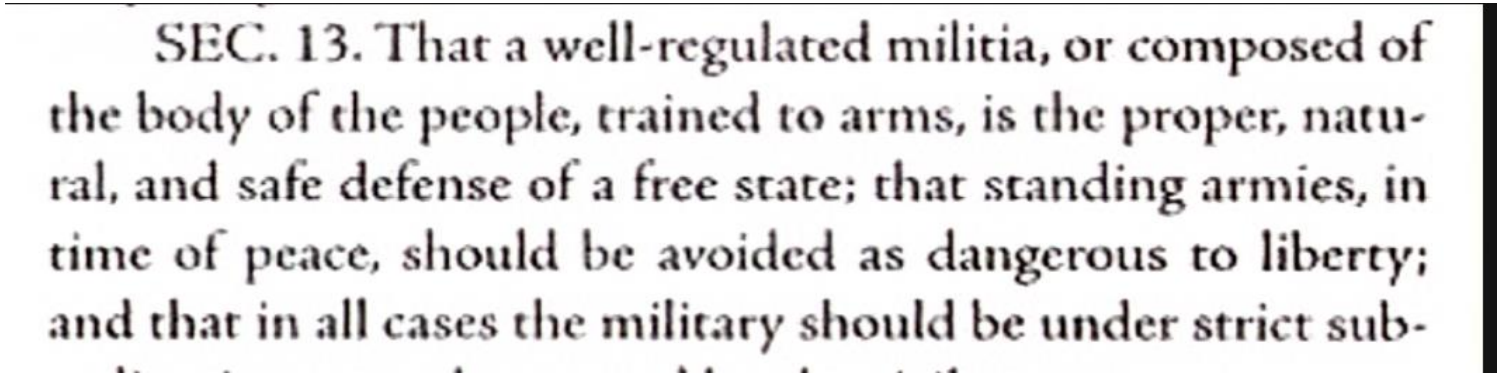
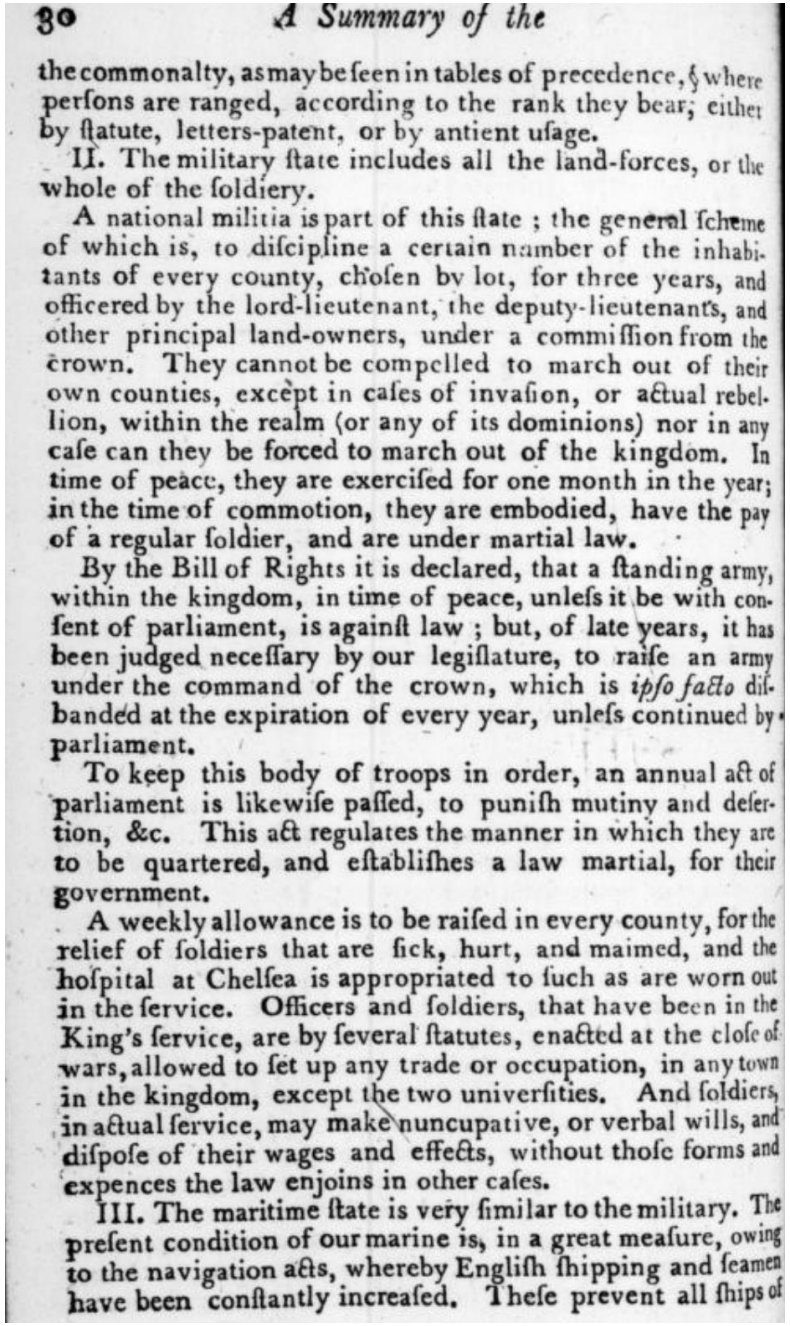


SEC. 13. That a well-regulated militia, or composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict sub-

That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

https://archive.org/details/patriotsreferenc0000unse

[…national militia is part of this state ; the general scheme of which 1s, to discipline a certain number of the inhabitants of every county, chosen by lot, for three years, and officered by the lord-lieutenant , the deputy-lieutenants, and other principal land-owners, under a commission from the crown, They cannot be compelled to march out of their own counties, except in caſes of invasion , or actual rebellion within the realm (or any of its dominions) nor in any caſe can they be forced to march out of the kingdom, In time of peace, they are exercised for one month in the year; an the time of commotion, they are embodied, have the pay of a regular soldier, and are under martial law. |By the Bill of Rights it is declared, that a standing army, within the kingdom, in time of peace, unless it be with consent of parliament, is against law…][…raise an army under the command of the crown, which is ipso facto disbanded at the expiration of every year, unless continued by parliament. [perpetual standing armies, state police, policy officers, FBI, etc.]



30 *A Summary of the*

the commonalty, as may be ſeen in tables of precedence, & where perſons are ranged, according to the rank they bear; either by ſtatute, letters-patent, or by antient uſage.

II. The military ſtate includes all the land-forces, or the whole of the ſoldiery.

A national militia is part of this ſtate ; the general ſcheme of which is, to diſcipline a certain number of the inhabitants of every county, choſen by lot, for three years, and officered by the lord-lieutenant, the deputy-lieutenants, and other principal land-owners, under a commiſſion from the crown. They cannot be compelled to march out of their own counties, except in caſes of invaſion, or actual rebellion, within the realm (or any of its dominions) nor in any caſe can they be forced to march out of the kingdom. In time of peace, they are exerciſed for one month in the year; in the time of commotion, they are embodied, have the pay of a regular ſoldier, and are under martial law.

By the Bill of Rights it is declared, that a ſtanding army, within the kingdom, in time of peace, unleſs it be with conſent of parliament, is againſt law ; but, of late years, it has been judged neceſſary by our legiſlature, to raiſe an army under the command of the crown, which is *ipſo facto* diſbanded at the expiration of every year, unleſs continued by parliament.

To keep this body of troops in order, an annual act of parliament is likewiſe paſſed, to puniſh mutiny and deſertion, &c. This act regulates the manner in which they are to be quartered, and eſtabliſhes a law martial, for their government.

A weekly allowance is to be raiſed in every county, for the relief of ſoldiers that are ſick, hurt, and maimed, and the hoſpital at Chelſea is appropriated to ſuch as are worn out in the ſervice. Officers and ſoldiers, that have been in the King's ſervice, are by ſeveral ſtatutes, enacted at the cloſe of wars, allowed to ſet up any trade or occupation, in any town in the kingdom, except the two univerſities. And ſoldiers, in actual ſervice, may make nuncupative, or verbal wills, and diſpoſe of their wages and effects, without thoſe forms and expences the law enjoins in other caſes.

III. The maritime ſtate is very ſimilar to the military. The preſent condition of our marine is, in a great meaſure, owing to the navigation acts, whereby Engliſh ſhipping and ſeamen have been conſtantly increaſed. Theſe prevent all ſhips of

https://archive.org/details/bim_eighteenth-century_a-summary-of-the-constit_blackstone-william-sir_1796

Virginia declaration of Rights . SECTION I. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

DIVEST, vero transitive [Latin It is the same word as devest, but the latter is appropriately used as a technical term in law.]
1.To strip of clothes, arms or equipage; opposed to invest.
2.To deprive; as, to divest one of his rights or privileges; to divest one of title or property.

POSTER'ITY, noun [Latin posteritas, from posterus, from post, after.]
1.Descendants; children, children's children, etc. indefinitely; the race that proceeds from a progenitor. The whole human race are the posterity of Adam.
2.In a general sense, succeeding generations; opposed to ancestors.

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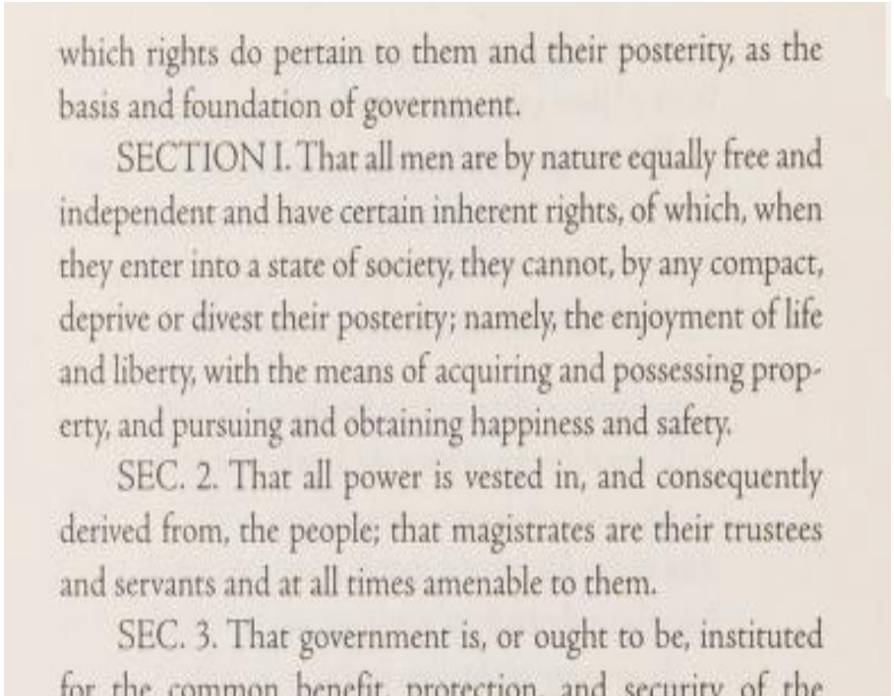


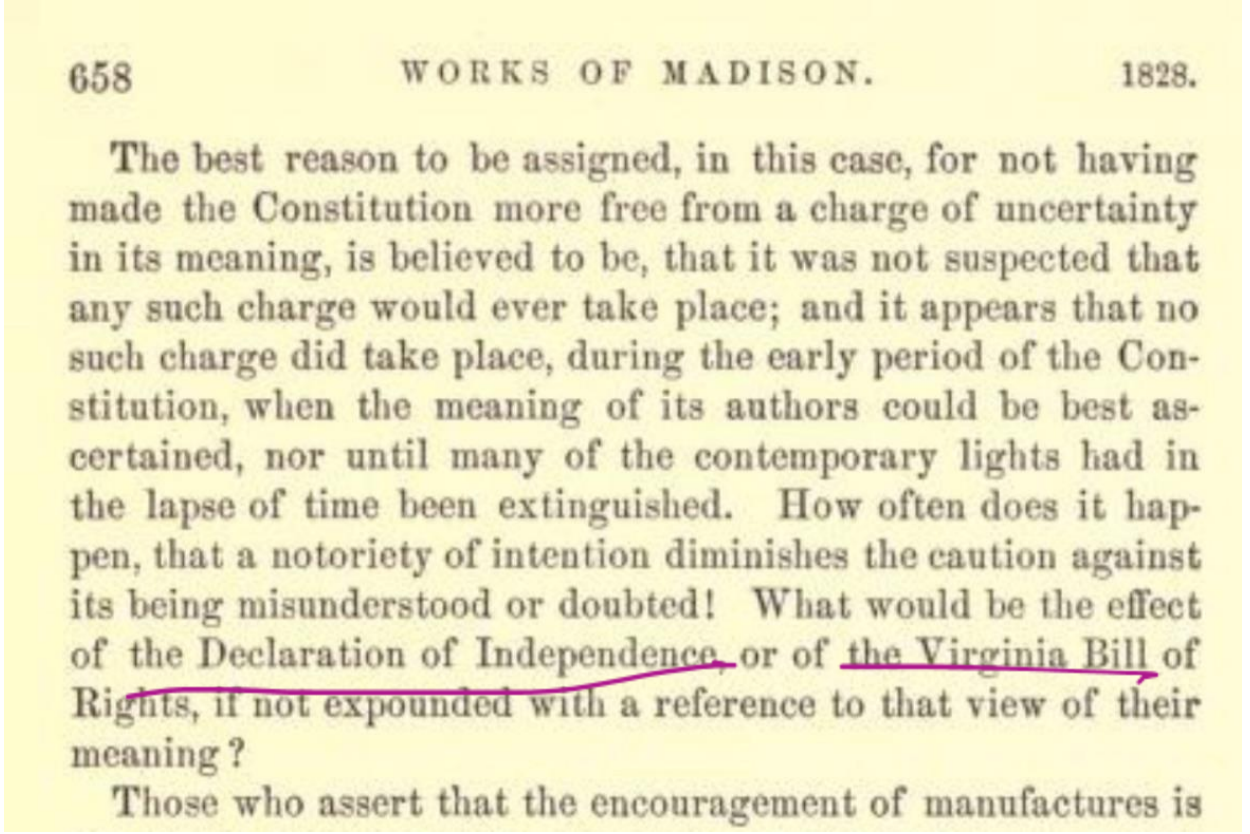
which rights do pertain to them and their posterity, as the basis and foundation of government.

SECTION I. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

SEC. 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them.

SEC. 3. That government is, or ought to be, instituted

The impact and significance of the Virginia Declaration of Rights has been intentionally hampered. Notice the intentional reference to it as a “Bill of Rights” instead of a “Declaration “



658 WORKS OF MADISON. 1828.

The best reason to be assigned, in this case, for not having made the Constitution more free from a charge of uncertainty in its meaning, is believed to be, that it was not suspected that any such charge would ever take place; and it appears that no such charge did take place, during the early period of the Constitution, when the meaning of its authors could be best ascertained, nor until many of the contemporary lights had in the lapse of time been extinguished. How often does it happen, that a notoriety of intention diminishes the caution against its being misunderstood or doubted! What would be the effect of the Declaration of Independence, or of the Virginia Bill of Rights, if not expounded with a reference to that view of their meaning?

Those who assert that the encouragement of manufactures is

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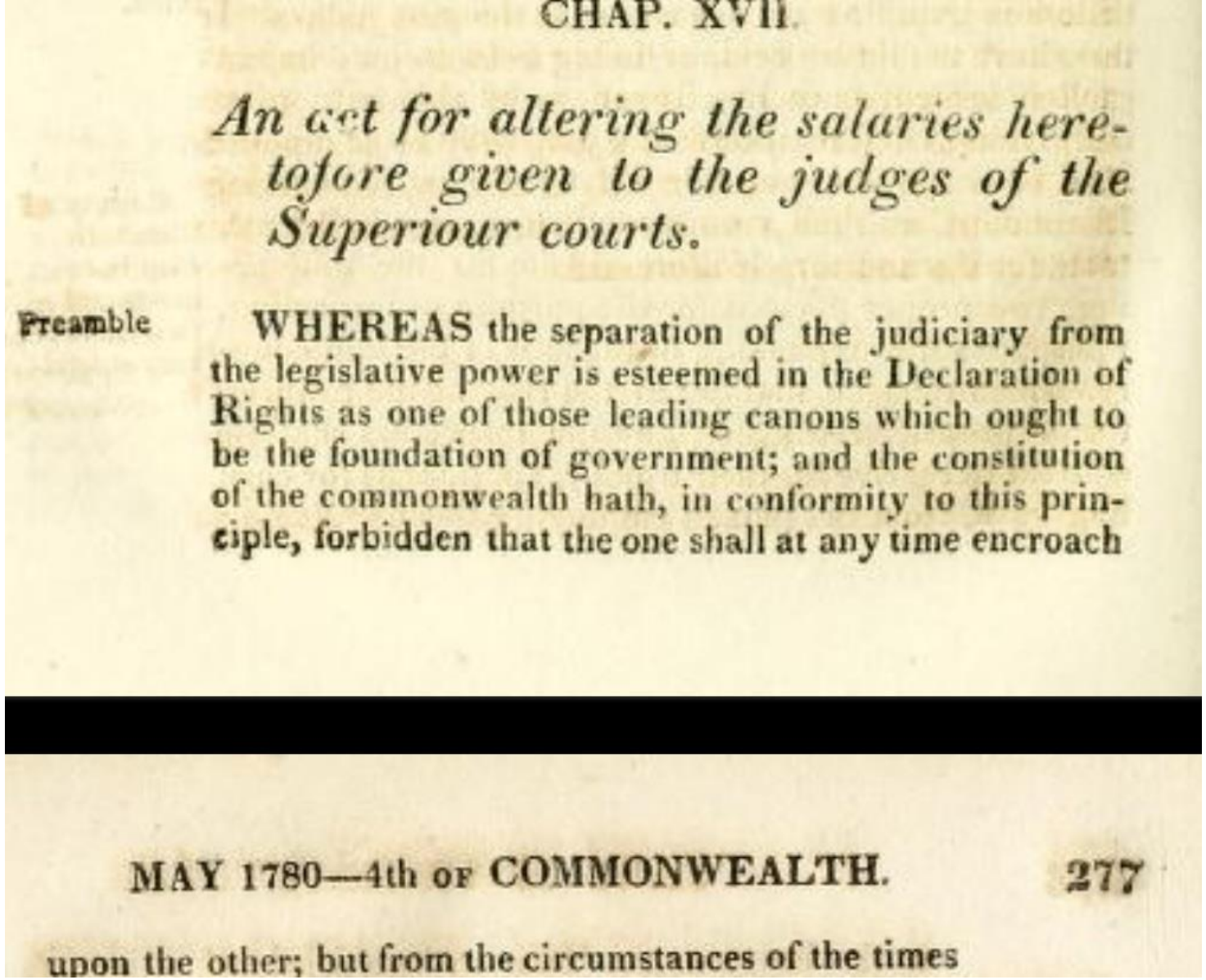
Notice in 1780 it is still referred to as the "Declaration of Rights"



CHAP. XVII.

An act for altering the salaries heretofore given to the judges of the Superiour courts.

Preamble

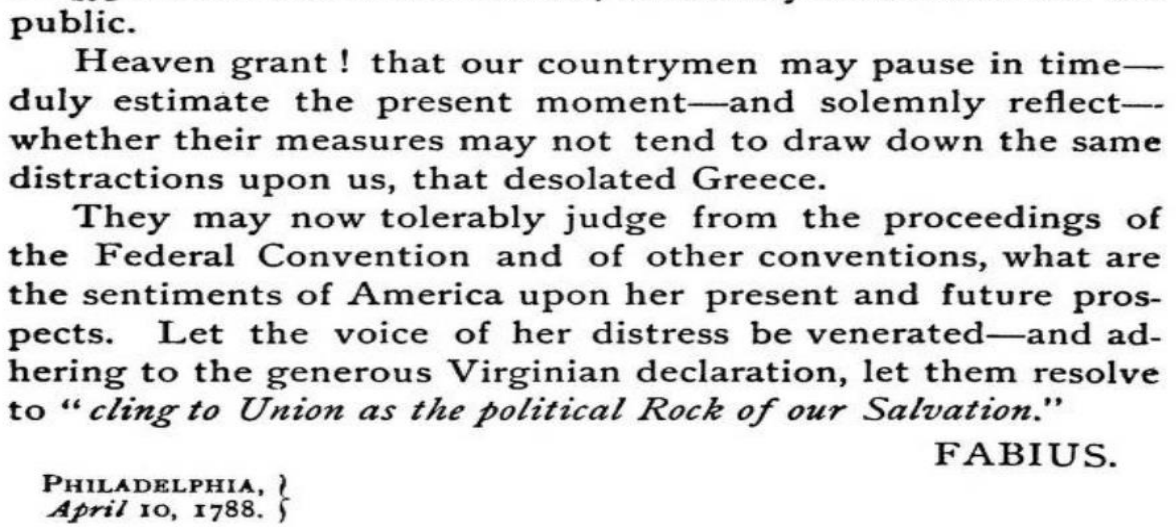
WHEREAS the separation of the judiciary from the legislative power is esteemed in the Declaration of Rights as one of those leading canons which ought to be the foundation of government; and the constitution of the commonwealth hath, in conformity to this principle, forbidden that the one shall at any time encroach

MAY 1780—4th OF COMMONWEALTH. 277

upon the other; but from the circumstances of the times

https://archive.org/details/statutesatlargeb10virg

They may now tolerably judge from the proceedings of the Federal Convention and of other conventions, what are the sentiments of America upon her present and future prospects. Let the voice of her distress be venerated — and adhering to the generous Virginian declaration, let them resolve to " cling to Union as the political Rock of our Salvation."



public.

Heaven grant! that our countrymen may pause in time—duly estimate the present moment—and solemnly reflect—whether their measures may not tend to draw down the same distractions upon us, that desolated Greece.

They may now tolerably judge from the proceedings of the Federal Convention and of other conventions, what are the sentiments of America upon her present and future prospects. Let the voice of her distress be venerated—and adhering to the generous Virginian declaration, let them resolve to "*cling to Union as the political Rock of our Salvation.*"

FABIUS.

PHILADELPHIA, *April* 10, 1788.

https://archive.org/details/cu31924020874099

[…arrogating to itself the right of interfering in the most minute objects of internal police, and the most trifling domestic concerns of every state, by possessing a power of passing laws " to provide for the general welfare of the United States/' which may affect life, liberty and property in every modification they may think expedient, unchecked -by cautionary reservations, and unrestrained by a declaration of any of those rights which the wisdom and prudence of America in the year 1776 held ought to be at all events protected from violation.

In a word, the new constitution will prove finally to dissolve all the power of the several state legislatures, and destroy the rights and liberties of the people ; for the power of the first will be all in all, and of the latter a mere shadow and form without substance, and if adopted we may (in imitation of the Carthagenians) say, Delenda vit American. Sydney.

[The June 12, 1776 Declaration of Rights]

they must constantly attend the president, because the president constantly acts. This council must have been composed of great characters, who could not be kept attending without great salaries, and if their opinions were binding on the president his responsibility would be destroyed—if divided, prevent vigor and dispatch—if not binding, they would be no security. The states who have had such councils have found them useless, and complain of them as a dead weight. In others, as in England, the supreme executive advises when and with whom he pleases; if any information is wanted, the heads of the departments who are always at hand can best give it, and from the manner of their appointment will be trustworthy. Secrecy, vigor, dispatch and responsibility, require that the supreme executive should be one person, and unfettered otherwise than by the laws he is to execute.

There is no Declaration of Rights. Bills of Rights were introduced in England when its kings claimed all power and jurisdiction, and were considered by them as grants to the people. They are insignificant since government is considered as originating from the people, and all the power government now has is a grant from the people. The constitution they establish with powers limited and defined, becomes now to the legislator and magistrate, what originally a bill of rights was to the people. To have inserted in this constitution a bill of rights for the states, would suppose them to derive and hold their rights from the federal government, when the reverse is the case.

There is to be no ex post facto laws. This was moved by Mr. Gerry and supported by Mr. Mason,* and is exceptional only as being unnecessary; for it ought not to be presumed that government will be so tyranical, and opposed to the sense of all modern civilians, as to pass such laws: if they should, they would be void.

The general legislature is restrained from prohibiting the further importation of slaves for twenty odd years. But every state legislature may restrain its own subjects; but if they should not, shall

* This is an error. It was moved by Mason and seconded by Gerry. Cf. *Papers of James Madison, III.*, 1578.

https://archive.org/details/EssaysOnTheConstitutionOfTheUnitedStates

1/06/2019 | *Trial Court Law Libraries, Massachusetts Court System, Executive Office of the Trial Court*

Section 4, **Virginia Declaration of Rights**, Adopted unanimously June 12, 1776, Virginia Convention of Delegates, drafted by Mr. George Mason: "That no man ...

BLOG POST

Massachusetts Declaration of Rights – Article 1 →

1/01/2019 | *Trial Court Law Libraries, Massachusetts Court System, Executive Office of the Trial Court*

"Article 1 of the Declaration of Rights, paraphrasing part of the Declaration of Independence and the **Virginia Declaration of Rights**, announces that "all ...

BLOG POST

Massachusetts Declaration of Rights – Article 14 →

1/14/2019 | *Trial Court Law Libraries, Massachusetts Court System, Executive Office of the Trial Court*

Section 10, **Virginia Declaration of Rights**, Adopted unanimously June 12, 1776, Virginia Convention of Delegates, drafted by Mr. George Mason ...

BLOG POST

Massachusetts Declaration of Rights – Article 5 →

1/05/2019 | *Trial Court Law Libraries, Massachusetts Court System, Executive Office of the Trial Court*

Section 3, **Virginia Declaration of Rights**, Adopted unanimously June 12, 1776, Virginia

According to historical analysis, nearly all, if not all, of the articles in the Pennsylvania Declaration of Rights are considered to be based heavily on the Virginia Declaration of Rights, with many sections appearing almost verbatim, making it a very close adaptation of the Virginia document; essentially, the Pennsylvania Declaration is largely a copy of the Virginia Declaration of Rights.

Key points:

Significant similarity:
John Adams noted that the Pennsylvania Bill of Rights was "taken almost verbatim from that of Virginia".

Common themes:
Both documents share core concepts like individual liberties, freedom of religion, ric

The Maryland Declaration of Rights was modeled on the Virginia Declaration of Rights, which was written by George Mason in 1776. The Virginia Declaration of Rights was based on the English Bill of Rights and the writings of John Locke.

Explanation

- The Maryland Declaration of Rights was intended to reaffirm the rights of English law.
- The Virginia Declaration of Rights was the first modern constitutional protection of individual rights in North America.
- Thomas Jefferson used the Virginia Declaration of Rights as the basis for the opening paragraphs of the Declaration of Independence.
- The Virginia Declaration of Rights was also wide

articles in the Georgia Declaratio of Rights are based on the Virgini Declaration of Rights, as the Virginia document served as a primary model for many state declarations of rights, including Georgia's, due to its influential language and structure outlining individual liberties.

Key points:

Significant influence:
The Virginia Declaration of Rights is considered the most influential document when it comes to state bill of rights, with many states closely mirroring its structure and content.

Similar principles:
Both documents share fundamental principles like the right to life, liberty, and property, freedom of speech an

- The New Hampshire Declaration o Rights was adopted in 1784. It was based on the Virginia Declaration Rights, the English Bill of Rights, ar the Magna Carta.
- The Virginia Declaration of Rights influenced the opening paragraph of the Declaration of Independenc It was also a model for the Bill of Rights, which was based on the Virginia Declaration of Rights, the English Bill of Rights, and the Magr Carta.

A significant portion of the Massachusetts Declaration of Rights, particularly the core principles regarding individual liberties like freedom of speech, religion, and the right to a fair trial, are directly based on the Virginia Declaration of Rights, meaning many, if not most, of the articles in the Massachusetts Declaration of Rights draw inspiration from the Virginia document; however, it's

"How many articles of the Pennsylvania [etc.] Decleration of Rights are based off of the Virginia Declaration of rights?"

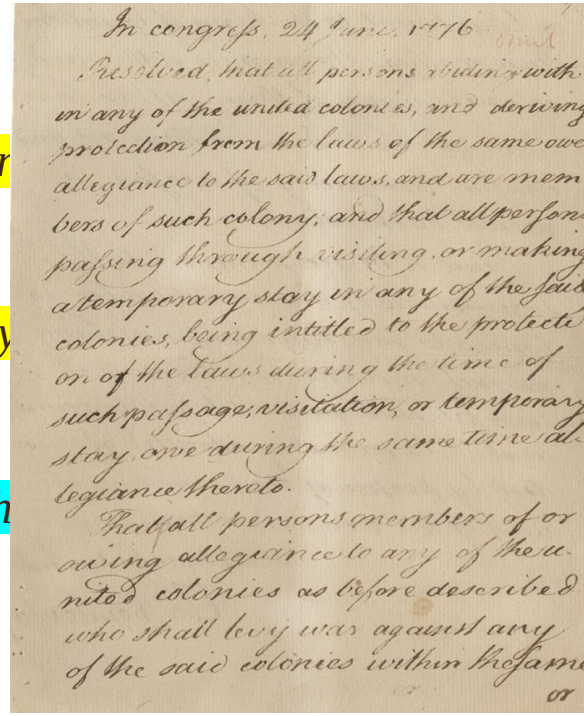
THE ORIGINAL DOCUMENT THAT SEPARATED US FROM ENGLAND

In congress, 24 June, 1776

Resolved, that all persons abiding within any of the united colonies and deriving protection from the laws of the same owe allegiance to the said laws, and are members of such colony; and that all persons passing through visiting, or making a temporary stay in any of the said colonies, being intitled to the protection of the laws during the time of such passage, visitation, or temporary stay, owe during the same time allegiance thereto.

That all persons members of or owing allegiance to any of the united colonies as before described who shall levy war against any of the said colonies within the same or be adherent to the king of Great Britain or others the enemies of the said colonies or any of them within the same giving to him or them aid and comfort are guilty of treason against such colony.

That it be recommended to the legislatures of the several united colonies to pass laws for punishing in such manner as to them shall seem fit such persons before described as shall be provably attainted of open deed by people of their condition of any of the treasons before described.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That all persons members of or owing allegiance to any of the united colonies as before described who shall levy war against any of the said colonies within the same or

All of the colonies except Georgia followed the advice of the Continental Congress and adopted laws defining and punishing treason. Nine colonies enacted statutes that generally followed the wording of this resolution. Thomas Jefferson also participated in drafting the Virginia treason statute of October 1776. Three states—Connecticut, Maryland, and South Carolina—adopted treason laws that did not follow the language recommended by the Continental Congress.

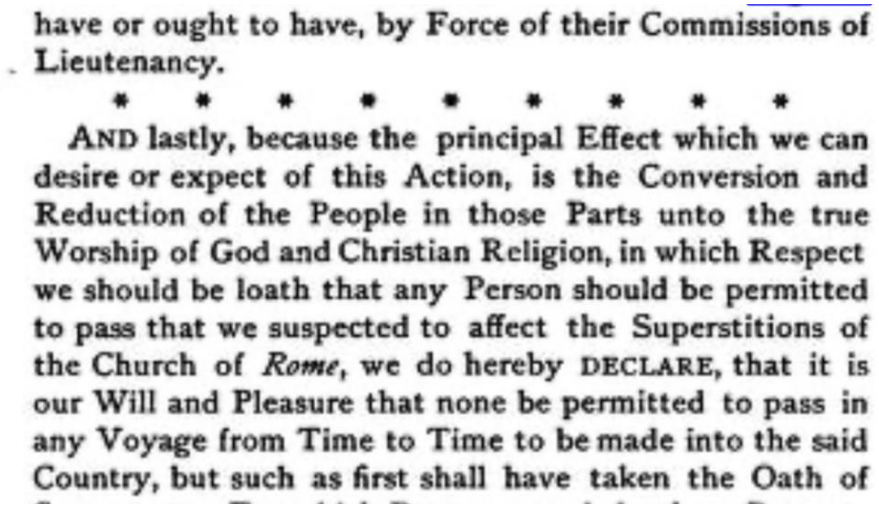
Essentially the same definition made its way into Article III, Section 3 of the United States Constitution, which declares, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." James Wilson, who had served on the Committee on Spies in 1776, helped frame the Constitution eleven years later.

Christianity Is The Declared Ideology of Our Nation

THE FIRST CHARTER OF VIRGINIA
1606. (continued)

[And lastly, because the principal Effect which we can desire or expect of this Action, is the Conversion and Reduction of the People in those Parts unto the true Worship of God and Christian Religion, in which Respect we should be loath that any Person should be permitted to pass that we suspected to affect the Superstitions of the Church of Rome we do hereby DECLARE, that it is our Will and Pleasure that none be permitted to pass in

Documents illustrative of American history, 1606-1863
Howard Preston
https://archive.org/details/documentsillust00unkngoog



have or ought to have, by Force of their Commissions of Lieutenancy.

* * * * * * * * *

AND lastly, because the principal Effect which we can desire or expect of this Action, is the Conversion and Reduction of the People in those Parts unto the true Worship of God and Christian Religion, in which Respect we should be loath that any Person should be permitted to pass that we suspected to affect the Superstitions of the Church of *Rome*, we do hereby DECLARE, that it is our Will and Pleasure that none be permitted to pass in any Voyage from Time to Time to be made into the said Country, but such as first shall have taken the Oath of

A Brief Declaration of the Plantation of Virginia during the first Twelve Yeares, when Sir Thomas Smith was Governor of the companie, & downe to this present tyme. By the Ancient Planters nowe remaining alive in Virginia.Wheras in the beginninge of Sir Thomas Smith's twelve yeares government, it was published in printe throughout the Kingdome of Englande that a Plantation should be settled in Virginia for the glorie of God in the propogation of the Gospell of Christ, the conversion of the Savages, to the honour of his Majesty, by the enlarging of his territories and future enrichinge of his kingdome, for which respects many noble & well minded persons were induced to adventure great fums of money to the advancement of so pious & noble a worke…]

https://archive.org/details/colonialrecordso00virg

STATE PAPER OFFICE.
COLONIAL.
Volume 3, No. 21, I.

A BREIFE DECLARATION *of the Plantation of Virginia duringe the first Twelve Yeares, when Sir Thomas Smith was Governor of the Companie, & downe to this present tyme. By the Ancient Planters nowe remaining alive in Virginia.*

WHERAS in the beginninge of Sir Thomas Smith's twelve yeares government, it was publiſhed in printe throughout the Kingdome of Englande that a Plantation ſhould be ſettled in Virginia for the glorie of God in the propogation of the Goſpell of Chriſt, the converſion of the Savages, to the honour of his Majeſty, by the enlargeinge of his territories and future enrichinge of his kingdome, for which reſpects many noble & well minded perſons were induced to adventure great ſums of money to the advancement of ſoe pious & noble a worke, who have from the very firſt been fruſtrate of their expectation, as wee conceive, by the miſgovernment of Sir Thomas Smith, aiminge at nothinge more then a perticular gaine, to be raiſed out of the labours of ſuch as both voluntarilie adventured themſelves and were otherwiſe ſent over

[….Bills of Rights were introduced in England when its kings claimed all power and jurisdiction, and were considered by them as grants to the people.

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https://archive.org/details/EssaysOnTheConstitutionOfTheUnitedStates

Montesquieu on Confederate Republics

BOOK IX

CHAP. II.: That a confederate Government ought to be composed of States of the same Nature, especially of the republican Kind.

[Same Language/Religion/Customs/Culture/Maxims/Fundamental Law/etc.etc.

CONSTITUTION OF COAHUILA AND TEXAS—1827 * •

The Governor of the Free State of Coahuila and Texas, to all its inhabitants—*Know*, that the Constituent Congress of the same State, has *Decreed* and sanctioned the following political Constitution of the Free State of Coahuila and Texas.

In the name of God, omnipotent, author, and supreme legislator of the Universe, the Constituent Congress of the State of Coahuila and Texas, desirous to comply with the will of the people, and in order completely to fill the great and magnificent object of promoting the glory and prosperity of the same State, *Decrees* for its administration and government the Constitution which follows:—

PRELIMINARY DISPOSITIONS

ARTICLE 1. The State of Coahuila and Texas consists in the union of all its inhabitants.

2. It is free and independent of the other United Mexican States, and of every other foreign power and dominion.

3. The sovereignty of the State resides originally and essentially in the general mass of the individuals who compose it; but these do not of themselves excuse any other acts of sovereignty than those designated in this Constitution, and in the form which it prescribes.

4. In all matters relating to the Mexican Federation, the State delegates its faculties and powers to the General Congress of the same, but in all that properly relates to the administration and entire Government of the State, it retains its liberty, independence, and sovereignty.

5. THEREFORE, Belongs exclusively to the same State, the right to establish by means of its representatives, its fundamental laws, conformable to the basis sanctioned in the Constitutional Act and the General Constitution.

6. The Territory of the State is the same which comprehends the Provinces heretofore known by the name of Coahuila and Texas. A constitutional law shall fix their limits with respect to the other adjoining States of the Mexican Federation.

7. The Territory of the State is divided for the present, for its better administration, into three departments, which shall be—BEXAR—which district is extended to the whole of the Territory, which corresponds to that called the Province of TEXAS, which alone is a district. MONCLOVA, which comprehends the district of this name and that of RIO GRANDE SALTILLO, which embraces the district of this name, and that of PARRAS.

8. Congress hereafter shall have power to alter, vary, and modify this division of the Territory of the State, in the manner it may esteem most conducive to the felicity of the people.

9. The Apostolic Catholic Religion is that of the State; this it protects by wise and just laws, and prohibits the exercise of any other.

* Verified by "The Constitution of the Republic of Mexico and the State of Coahuila and Texas. New York. Ludwig and Tolifree, Printers, 1832."

• The two northeastern provinces of Mexico, not having sufficient population to entitle them to enter the Mexican Union as separate states, were united as "the state of Coahuila and Texas." The state congress which met at Saltillo framed this constitution, which was proclaimed March 11, 1827.

CONSTITUTION OF COAHUILA AND TEXAS-1827 * •

The Governor of the Free State of Coahuila and Texas, to all its the Free State of Coahuila and Texas.

In the name of God, omnipotent, author, and supreme legislator of the Universe, the Constituent Congress of the State of Coahuila and Texas, desirous to comply with the will of the people, and in order completely to fill the great and magnificent object of promoting the glory and prosperity of the same State, Decrees for its administration and government the Constitution which follows...] 4. In all matters relating to the Mexican Federation..][.. 9. The Apostolic Catholic Religion is that of the State; this it protects by wise and just laws, and prohibits the exercise of any other.

South Carolina—1776

[...of the general assembly shall be chosen, to meet on the first Monday in December then next, and continue for two years from the said last monday in October. The general assembly to consist of the same number of members as this congress does, each parish and district having the same representatives as at present, viz ; the parish of Saint Philip and Saint Michael, Charlestown, thirty members; the parish of Christ Church, six members; the parish of Saint John, in Berkely County, six members; the parish of Saint Andrew, six members...] [ETC.ETC.]

of the general assembly shall be chosen, to meet on the first Monday in December then next, and continue for two years from the said last Monday in October. The general assembly to consist of the same number of members as this congress does, each parish and district having the same representation as at present, viz: the parish of Saint Philip and Saint Michael, Charlestown, thirty members; the parish of Christ Church, six members; the parish of Saint John, in Berkely County, six members; the parish of Saint Andrew, six members; the parish of Saint George Dorchester, six members; the parish of Saint James Goose Creek, six members; the parish of Saint Thomas and Saint Dennis, six members; the parish of Saint Paul, six members; the parish of Saint Bartholemew, six members; the parish of Saint Helena, six members; the parish of Saint James Santee, six members; the parish of Prince George, Winyaw, six members; the parish of Prince Frederick, six members; the parish of Saint John, in Colleton County, six members; the parish of Saint Peter, six members; the parish of Prince William, six members; the parish of Saint Stephen, six members; the district to the eastward of Wateree River, ten members; the district of Ninety-six, ten members; the district of Saxe Gotha, six members; the district between Broad and Saluda Rivers, in three divisions, viz: the Lower district, four members; the Little River district, four members; the Upper or Spartan district, four members; the district between Broad and Catawba Rivers, ten members; the district called the New Acquisition, ten members; the parish of Saint Mathew, six members; the parish of Saint David, six members; the district between Savannah River and the North Fork of Edisto, six members. And the election of the said members shall be conducted as near as may be agreeable to the directions of the election act, and where there are no churches or church wardens in a district or parish, the general assembly, at some convenient time before their expiration, shall appoint places of election and persons to receive votes and make returns. The qualifications of electors shall be the same as required by law, but persons having property, which, according to the rate of the last preceding tax, is taxable at the sums mentioned in the election act, shall be entitled to vote, though it was no actually taxed, having the other qualifications mentioned in that act; electors shall take an oath of qualification, if required by the returning-officer. The qualification of the elected to be the same as mentioned in the election act, and construed to mean clear of debt.

XII. That if any parish or district neglects or refuses to elect members, or if the members chosen do not meet in general assembly, those who do meet shall have the powers of a general assembly; not less than forty-nine members shall make a house to do business, but the speaker or any seven members may adjourn from day to day.

XIII. That as soon as may be, after the first meeting of the general assembly, a president and commander-in-chief, a vice-president of the colony and privy council, shall be chosen in manner and for the time above mentioned, and till such choice be made the former president and commander-in-chief and vice-president of the colony and privy council shall continue to act as such.

XIV. That in case of the death of the president and commander-in-chief, or his absence from the colony, the vice-president of the colony shall succeed to his office, and the privy council shall choose

[...THE Common law is taken three manner of ways.
First, it is taken as the law of this realm of England, dis-severed from all other laws. And under this manner taken it is oftentimes argued in the laws of England, what matters **ought of right** to be determined **by the Common law**, and what by the admiral's court, **or by the spiritual court**...] [Your Church/Parish]

Expositiones Terminorum Legum Anglorumae, 1527, John Rastell, Pg. 71-72

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[...And therefore, for the better discovery for the truth of the matter in fact **upon every tryall, some of the jury must be of the same hundred** or **sometimes of the parish** in which the thing is supposed to be done, who by intendment, may have the best knowledge of the matter...] **Henry VIII, 1544**

Expositiones Terminorum Legum Anglorumae, 1527, John Rastell, Pg. 288

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Thirdly, by the Common law is understood such things as were law before statute made in that point that is in question; so that that point was holden for law **by the general or particular customs** and **maxims of the realm**, or **by the law of reason, and the law of God,** no other law added to them by statute, .nor otherwise...]
Dialogus de fundamentis legum Anglie et de conscientia **Christopher St. Germain, First published 1528 Pg. 106**

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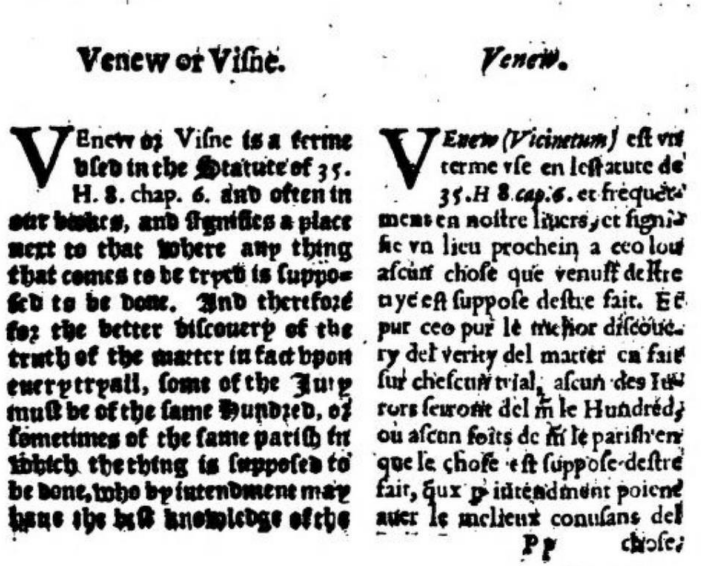
June 12, 1776

DECLARATION OF RIGHTS

On May 15, 1776, the Virginia Convention passed two resolutions. The first directed Virginia delegates to the Continental Congress to propose an official declaration of independence for the thirteen colonies. The second appointed a committee to draft a Declaration of Rights. Primarily written by George Mason, the final draft was adopted June 12 and influenced not only the Declaration of Independence, but later the Bill of Rights. A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention;

Common Ley is for, the most part taken 3 ways;
First for the Lawes of this realme, without the Lawes of th
Realme amply, without any other, as Customary Law, Civ
Law, Spiritual Law,
or whatsoever the Law joined to it;
as when it is disputed in our Lawes of England,
what ought of right to be determined by the Common Law
and what by the Spiritual Law, or Admiralls Court or such
like.
Secondly it is taken from the Kings Courts,
as the kings bench, or Common Place onlt to shew a
difference between them and base courts as Customarie
Courts, Court Barons, County Courts, Pipowders, and suc
like; as when a Plea of land is removed out of ancient
demesne, because the land is fraken-fee and pleadgable at
Common Law, that is to say, in the King's Court, and not
any other base court. ...]
Thirdly, and most usually by the Common Law is
understood such Lawes as were generally taken and helde
for Law, before any Statute was made to alter the same...]

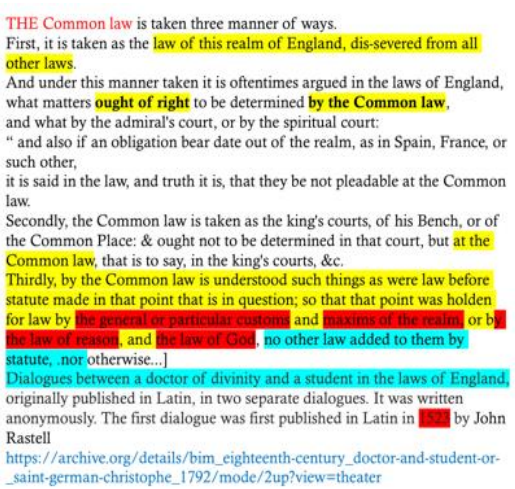

Venew or Viſne.

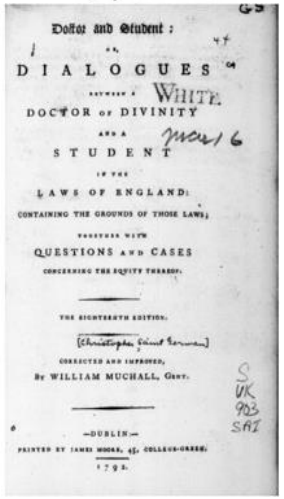
Venew.

Venew of Viſne is a terme vſed in the Statute of 35. H. 8. chap. 6. and often in our bookes, and ſignifies a place next to that where any thing that comes to be tryed is ſuppoſed to be done. And therefore for the better diſcovery of the truth of the matter in fact vpon every tryall, ſome of the Jury muſt be of the ſame Hundred, or ſometimes of the ſame parish in which the thing is ſuppoſed to be done, who by intendment may haue the beſt knowledge of the

Venew (Vicinetum) eſt vn terme vſe en leſtatute de 35. H 8. cap. 6. et frequente mens en noſtre liures, et ſignifie le vn lieu prochein a ceo lou aſcun choſe que venuſt de dire eſt ſuppoſe deſtre fait. Et pur ceo pur le meilior diſcouery del verity del matter en fait ſur chefcun trial, aſcun des Iurors ſeront del m le Hundred, ou aſcun foits de m le pariſh en que le choſe eſt ſuppoſe deſtre fait, ſuz p intendment poient auer le meilleur conuſans del

Pp choſe;


THE Common law is taken three manner of ways.
First, it is taken as the law of this realm of England, dis-severed from all other laws.
And under this manner taken it is oftentimes argued in the laws of England, what matters **ought of right** to be determined **by the Common law**, and what by the admiral's court, or by the spiritual court:
" and also if an obligation bear date out of the realm, as in Spain, France, or such other,
it is said in the law, and truth it is, that they be not pleadable at the Common law.
Secondly, the Common law is taken as the king's courts, of his Bench, or of the Common Place: & ought not to be determined in that court, but at the Common law, that is to say, in the king's courts, &c.
Thirdly, by the Common law is understood such things as were law before statute made in that point that is in question; so that that point was holden for law by the general or particular customs and maxims of the realm, or by the law of reason, and the law of God, no other law added to them by statute, .nor otherwise...]
Dialogues between a doctor of divinity and a student in the laws of England, originally published in Latin, in two separate dialogues. It was written anonymously. The first dialogue was first published in Latin in 1523 by John Rastell
https://archive.org/details/bim_eighteenth-century_doctor-and-student-or-_saint-german-christophe_1792/mode/2up?view=theater


Doctor and Student:
DIALOGUES
WHITE
DOCTOR OF DIVINITY
STUDENT
LAWS OF ENGLAND:
QUESTIONS AND CASES
DUBLIN

Virginia Declaration of Rights, ARTICLE XVI

THAT Religion, or the Duty which we owe our Creator, and the Manner of discharging it, can only by Reason and Conviction, not by Force or Violence; and therefore, all MEN are equally entitled to the free exercise of Religion, according to the Dictates of Conscience; and that the mutual Duty of all to practice Christian Forbearance, Love,And Charity, towards each other.

Reports of cases argued and adjudged in the Supreme Court of Pennsylvania
William Rawle
Reports from 1829-1832
Vol. 3, by C.B. Penrose and Frederick Watts
Pg. 13

[...From time immemorial Christians of every denomination have doubtless had their ecclesiastical courts ; and to these is allowed full and free power to adjudicate on matters submitted to them. But when the civil magistrate is called in to punish for a disregard of the sanctions which they impose, it becomes a question whether he can interpose, without perverting his power from its legitimate objects. Christianity has been indefinitely said to be a part of the law of the land...]

Maxim: The Law of God and the law of the land are all one.

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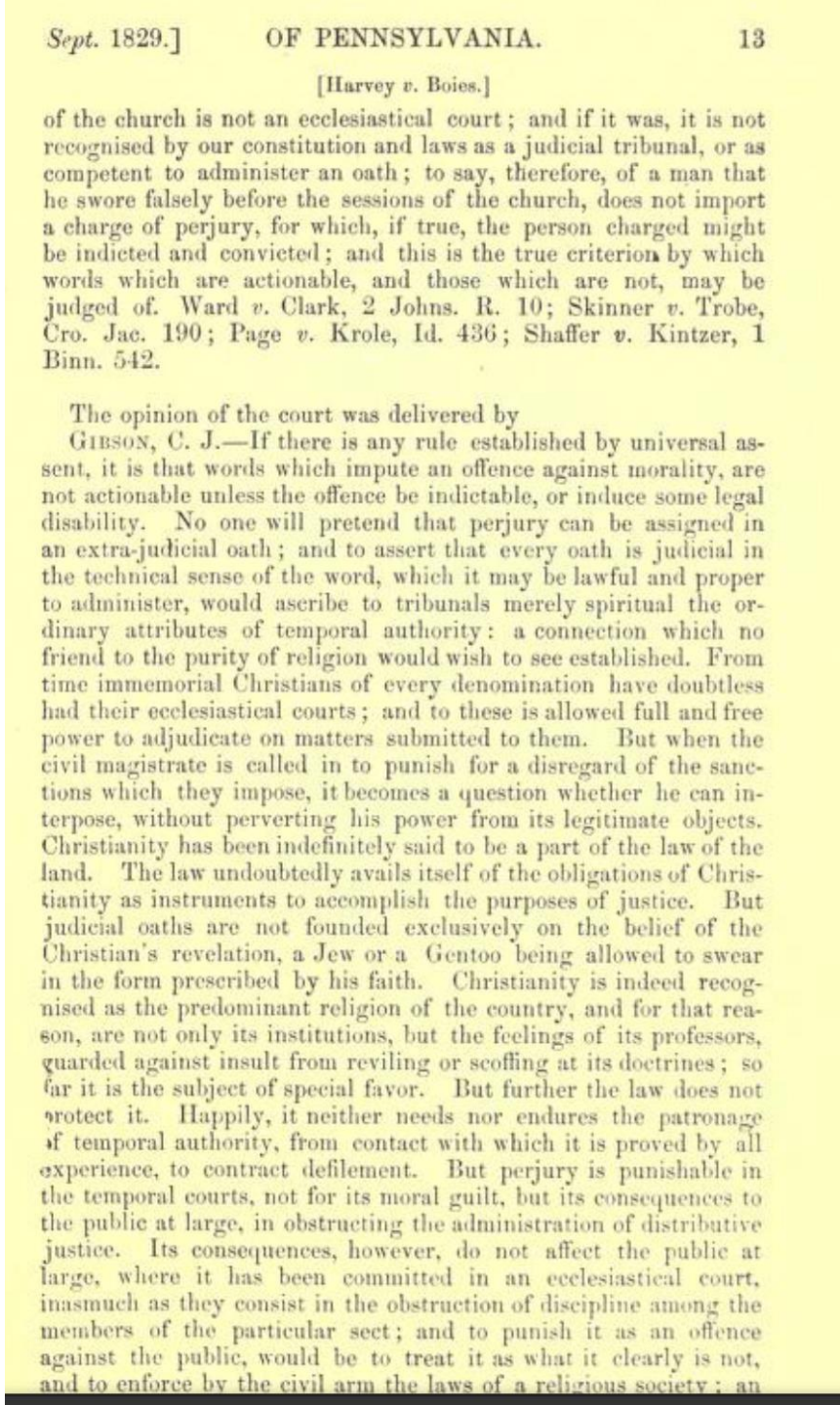

Sept. 1829.] OF PENNSYLVANIA. 13

[Harvey v. Boies.]

of the church is not an ecclesiastical court; and if it was, it is not recognised by our constitution and laws as a judicial tribunal, or as competent to administer an oath; to say, therefore, of a man that he swore falsely before the sessions of the church, does not import a charge of perjury, for which, if true, the person charged might be indicted and convicted; and this is the true criterion by which words which are actionable, and those which are not, may be judged of. Ward v. Clark, 2 Johns. R. 10; Skinner v. Trobe, Cro. Jac. 190; Page v. Krole, Id. 436; Shaffer v. Kintzer, 1 Binn. 542.

The opinion of the court was delivered by

GIBSON, C. J.—If there is any rule established by universal assent, it is that words which impute an offence against morality, are not actionable unless the offence be indictable, or induce some legal disability. No one will pretend that perjury can be assigned in an extra-judicial oath; and to assert that every oath is judicial in the technical sense of the word, which it may be lawful and proper to administer, would ascribe to tribunals merely spiritual the ordinary attributes of temporal authority: a connection which no friend to the purity of religion would wish to see established. From time immemorial Christians of every denomination have doubtless had their ecclesiastical courts; and to these is allowed full and free power to adjudicate on matters submitted to them. But when the civil magistrate is called in to punish for a disregard of the sanctions which they impose, it becomes a question whether he can interpose, without perverting his power from its legitimate objects. Christianity has been indefinitely said to be a part of the law of the land. The law undoubtedly avails itself of the obligations of Christianity as instruments to accomplish the purposes of justice. But judicial oaths are not founded exclusively on the belief of the Christian's revelation, a Jew or a Gentoo being allowed to swear in the form prescribed by his faith. Christianity is indeed recognised as the predominant religion of the country, and for that reason, are not only its institutions, but the feelings of its professors, guarded against insult from reviling or scoffing at its doctrines; so far it is the subject of special favor. But further the law does not protect it. Happily, it neither needs nor endures the patronage of temporal authority, from contact with which it is proved by all experience, to contract defilement. But perjury is punishable in the temporal courts, not for its moral guilt, but its consequences to the public at large, in obstructing the administration of distributive justice. Its consequences, however, do not affect the public at large, where it has been committed in an ecclesiastical court, inasmuch as they consist in the obstruction of discipline among the members of the particular sect; and to punish it as an offence against the public, would be to treat it as what it clearly is not, and to enforce by the civil arm the laws of a religious society; an

Every man is obliged to endeavour to obtain just ideas of God, to know his laws, his views with respect to his creatures, and the end for which they were created: man, doubtless, owes the most pure love, the most profound respect to his Creator; and to keep alive these dispositions , and act in consequence of them, they thould honour God in all his actions, and shee, by the most suitable measures, the sentiments that fill his mind. is sufficient to prove, that man is essential and necessarily free to make use of his own choice in matters of religion.. His belief is not to be commanded; and what kind of worship must that be, which is produced by force!

worship consists in certain actions performed with an immediate view to the honour of God; there can then be no worship proper for any man, which he does not believe suitable to that end. The obligation of sincerity endeavouring to know God, of serving him, and adoring him from the bottom of the heart, being imposed on man by his very nature, it is impossible for him by his engagements with society, to discharge this duty, or to deprive himfelf of the liberty necessary to fulfil it. It must then be concluded, that liberty of conscience is a natural and inviolable right. It is a digrace to human nature, that a truth of this nature should want to be proved.

But we should take care not to extend this liberty beyond its just bounds.

A citizen [man] has only the right of never being obliged to do any thing in religious affairs, and not that of doing outwardly whatever he pleases, though it may proceed from his regard to society. The establishment of religion by the laws, and its public exercise, are matters of state, and are necessarily under the juridiction of the public authority, If all men ought to serve God, the entire nation, in its national capacity, is doubtless obliged to serve and honour him (Prelim. § 5.) And as it ought to discharge this important duty in that manner which appears to the nation to be the best; the nation is to determine the religion it would follow, and the public worship it would establish .

If there be yet no religion established by public authority, the nation ought to use the utmost care, in order to know and establish the best.

That which shall have the approbation of the majority thall be received, and publicly established by law; by which means it will become the religion of the state.

But it is asked, if a considerable part of the nation insists upon following another,
what does the law of nations require in that respect?

Let us first remember that liberty of conscience is a natural right; and that there must be no constraint in this respect.

There remains then two methods to take;
either to permit this party of the citizens to exercise the religion they profess,
or to separate the society, by leaving them their fortunes and their share of the country that belonged to the nation in common, and thus form two new states instead of one. The last method will appear no ways proper; it would weaken the nation, and thus would be contrary.

§ 128. Liberty of conscience, the right of individuals.

Every man is obliged to endeavour to obtain juſt ideas of God, to know his laws, his views with reſpect to his creatures, and the end for which they were created: man, doubtleſs, owes the moſt pure love, the moſt profound reſpect to his Creator; and to keep alive theſe diſpoſitions, and act in conſequence of them, he ſhould honour God in all his actions, and ſhew, by the moſt ſuitable meaſures, the ſentiments that fill his mind. This ſhort explanation is ſufficient to prove, that man is eſſentially and neceſſarily free to make uſe of his own choice in matters of religion. His belief is not to be commanded; and what kind of worſhip muſt that be, which is produced by force! worſhip conſiſts in certain actions performed with an immediate view to the honour of God; there can then be no worſhip proper for any man, which he does not believe ſuitable to that end. The obligation of ſincerely endeavouring to know God, of ſerving him, and adoring him from the bottom of the heart, being impoſed on man by his very nature, it is impoſſible for him by his engagements with ſociety, to diſcharge this duty, or to deprive himſelf of the liberty neceſſary to fulfil it. It muſt then be concluded, that liberty of conſcience is a natural and inviolable right. It is a diſgrace to human nature, that a truth of this nature ſhould want to be proved.

§ 129. The duties and rights of the nation in regard to the public eſtabliſhment of religion.

But we ſhould take care not to extend this liberty beyond its juſt bounds. A citizen has only the right of never being obliged to do any thing in religious affairs, and not that of doing outwardly whatever he pleaſes, though it may proceed from his regard to ſociety. The eſtabliſhment of religion by the laws, and its public exerciſe, are matters of ſtate, and are neceſſarily under the juriſdiction of the public authority. If all men ought to ſerve God, the entire nation, in its national capacity, is doubtleſs obliged to ſerve and honour him (Prelim. § 5.) And as it ought to diſcharge this important duty in that manner which appears to the nation to be the beſt; the nation is to determine the religion it would follow, and the public worſhip it would eſtabliſh.

§ 130. When there is no eſtabliſhed religion.

If there be yet no religion eſtabliſhed by public authority, the nation ought to uſe the utmoſt care, in order to know and eſtabliſh the beſt. That which ſhall have the approbation of the majority ſhall be received, and publicly eſtabliſhed by law; by which means it will become the religion of the ſtate. But it is aſked, if a conſiderable part of the nation inſiſts upon following another, what does the law of nations require in that reſpect? Let us firſt remember that liberty of conſcience is a natural right; and that there muſt be no conſtraint in this reſpect. There remains then two methods to take; either to permit this party of the citizens to exerciſe the religion they profeſs, or to ſeparate the ſociety, by leaving them their fortunes and their ſhare of the country that belonged to the nation in common, and thus form two new ſtates inſtead of one. The laſt method will appear no ways proper; it would weaken the nation, and thus would be contrary

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Case in point-Of changing the declared religion, at one time, Canada was a Christian nation before it was declared to be Apostolic Catholic

[…He will consequently give the most precise and effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to rites
the rights of the Romish church, so far as the lats of i Great Britain can permit-His Britannic majesty church:
agrees that the French inhabitants or others who have been subjects of the most Christian King in Canada , may retire with all safety and freedom wherever they shall think proper, and may sell their estates provided it be to subjects of his Britannic Majesty, and bring away their effects as well as their persons without being restrained in their emigration under any pretense, except that of criminal prosecutions..] .

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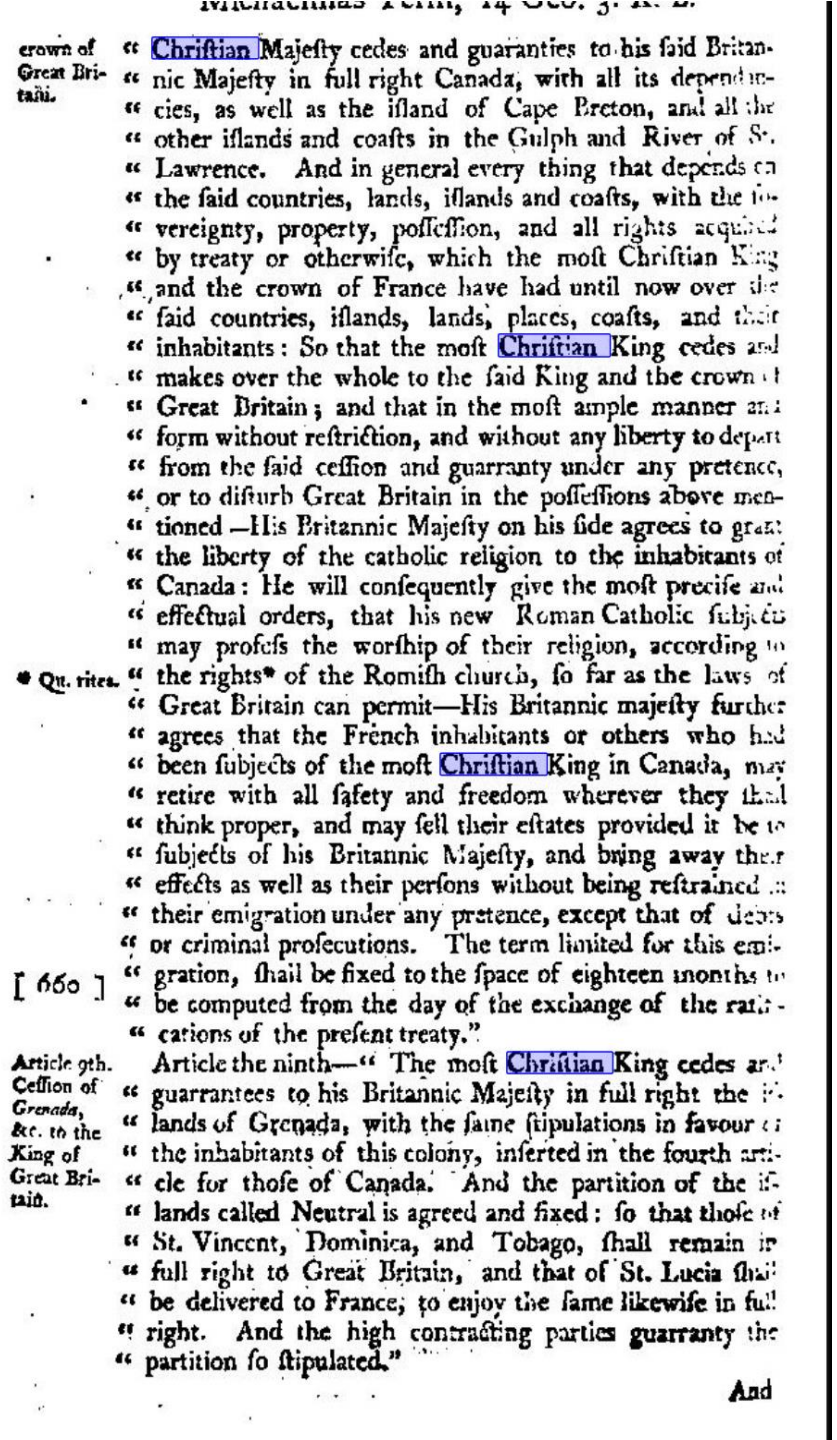

crown of Great Britain.

" Chriſtian Majeſty cedes and guaranties to his ſaid Britan-
" nic Majeſty in full right Canada, with all its dependen-
" cies, as well as the iſland of Cape Breton, and all the
" other iſlands and coaſts in the Gulph and River of St.
" Lawrence. And in general every thing that depends on
" the ſaid countries, lands, iſlands and coaſts, with the ſo-
" vereignty, property, poſſeſſion, and all rights acquired
" by treaty or otherwiſe, which the moſt Chriſtian King
" and the crown of France have had until now over the
" ſaid countries, iſlands, lands, places, coaſts, and their
" inhabitants: So that the moſt Chriſtian King cedes and
" makes over the whole to the ſaid King and the crown of
" Great Britain; and that in the moſt ample manner and
" form without reſtriction, and without any liberty to depart
" from the ſaid ceſſion and guarranty under any pretence,
" or to diſturb Great Britain in the poſſeſſions above men-
" tioned—His Britannic Majeſty on his ſide agrees to grant
" the liberty of the catholic religion to the inhabitants of
" Canada: He will conſequently give the moſt preciſe and
" effectual orders, that his new Roman Catholic ſubjects
" may profeſs the worſhip of their religion, according to
* Qu. rites. " the rights* of the Romiſh church, ſo far as the laws of
" Great Britain can permit—His Britannic majeſty further
" agrees that the French inhabitants or others who had
" been ſubjects of the moſt Chriſtian King in Canada, may
" retire with all ſafety and freedom wherever they ſhall
" think proper, and may ſell their eſtates provided it be to
" ſubjects of his Britannic Majeſty, and bring away their
" effects as well as their perſons without being reſtrained in
" their emigration under any pretence, except that of debts
" or criminal proſecutions. The term limited for this emi-
[660] " gration, ſhall be fixed to the ſpace of eighteen months to
" be computed from the day of the exchange of the ratifi-
" cations of the preſent treaty."

Article 9th. Ceſſion of *Grenada*, &c. to the King of Great Britain.

Article the ninth—" The moſt Chriſtian King cedes and
" guarrantees to his Britannic Majeſty in full right the iſ-
" lands of Grenada, with the ſame ſtipulations in favour of
" the inhabitants of this colony, inſerted in the fourth arti-
" cle for thoſe of Canada. And the partition of the iſ-
" lands called Neutral is agreed and fixed: ſo that thoſe of
" St. Vincent, Dominica, and Tobago, ſhall remain in
" full right to Great Britain, and that of St. Lucia ſhall
" be delivered to France, to enjoy the ſame likewiſe in full
" right. And the high contracting parties guarranty the
" partition ſo ſtipulated."

And

The law of nations -Religion and Piety
Emerich de Vattel-Translated from the French.
1793 -Book 1 Chpt. XII
[…The prince, or the conductor, to whom the nation has intrusted the care of the government, and the exercise of the sovereign power, is obliged to watch over the preservation of the received religion, the worship established by law, and has a right to restrain those who attempt to destroy, or disturb it.
But to acquit himself of this duty in a manner equally just and wise, he ought never to lose sight of the equality in which he is called to act, and the reason of his being invested with it. Religion is of extreme importance to the welfare and tranquility of the society, and the prince is obliged to have an eye to every thing in which the state is interested. This is all that calls him to interfere in religion, or to protect and defend it. He can then interfere only upon this footing, and consequently he can use his power against none but those whose religious conduct, is prejudicial or dangerous to the state, and cannot punish pretended crimes against God, where the vengeance alone belongs to the Sovereign Judge, the Searcher of hearts. Let us remember that religion is no farther an affair of state, than as it is exterior and publicly established : that of the heart can only depend on the conscience .
The prince has a right to punish none but those that disturb society, and it would be very unjust for him to inflict pains and penalties on any action whatever for his private opinions, when that person neither take pains to divulge them, nor to obtain followers. It is a principle of fanaticism , a source of evils, and the most notorious injustice for weak mortals to imagine that they ought to take up the cause of God, maintain his glory by acts of violence, and revenge him on his enemies.
Let us only give to sovereigns, said a great statesman, and an excellent citizen, let us give them for tbe common advantage, the power for punishing whatever is injurious to charity in Society.
It does not belong to human justice to become the revenger of the cause that belongs to God. Cicero, who was as able, and as great in state affairs, as in philosophy and eloquence, thought like the duke of Sully. In the laws he proposed relating to religion, he says, on the subject of piety and interior religion, " if any one commits a fault, God will revenge it:" but he declares the crime capital that should be committed against the religious ceremonies established for the public affairs, and in which the whole fate is concerned. The wise Romans were very far from persecuting a man for his creed; they only required that people should not disturb the public order.

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[..In things that prejudice the tranquillity or security of the state, secret actions are subject to human jurisdiction. But in those which offend the Deity, where there is no public act, there can be no criminal matter, the whole passes betwixt man and God, who knows the measure and time of his vengeance…][.. The mischief arises from a notion which some people have entertained of revenging the cause of the Deity. But we must honour the Deity and leave him to avenge his own cause. And, indeed, were we to be directed by such a notion, where would be the end of punishments ? If human laws are to avenge the cause of an infinite Being, they will be directed by his infinity, and not by the weakness, ignorance, and caprice of man…]

The Greeks* and Romans† required one voice more to condemn: but our French laws insist upon two. The Greeks pretend that their custom was established by the Gods;‡ but this more justly may be said of ours.

CHAP. IV.

That Liberty is favoured by the Nature and Proportion of Punishments.

LIBERTY is in its highest perfection, when criminal laws derive each punishment from the particular nature of the crime. There are then no arbitrary decisions; the punishment does not flow from the capriciousness of the legislator, but from the very nature of the thing; and man uses no violence to man.

There are four sorts of crimes. Those of the first species are prejudicial to religion, the second to morals, the third to the public tranquillity, and the fourth to the security of the subject. The punishments inflicted for these crimes ought to proceed from the nature of each of these species.

In the class of crimes that concern religion, I rank only those which attack it directly, such as all simple sacrileges. For as to crimes that disturb the exercise of it, they are of the nature of those which prejudice the tranquillity or security of the subject, and ought to be referred to those classes.

In order to derive the punishment of simple sacrileges from the nature of the thing,§ it should consist in depriving people of the advantages conferred by religion in expelling them out of the temples, in a temporary or perpetual exclusion from the society of the faithful, in shunning their presence, in execrations, comminations, and conjurations.

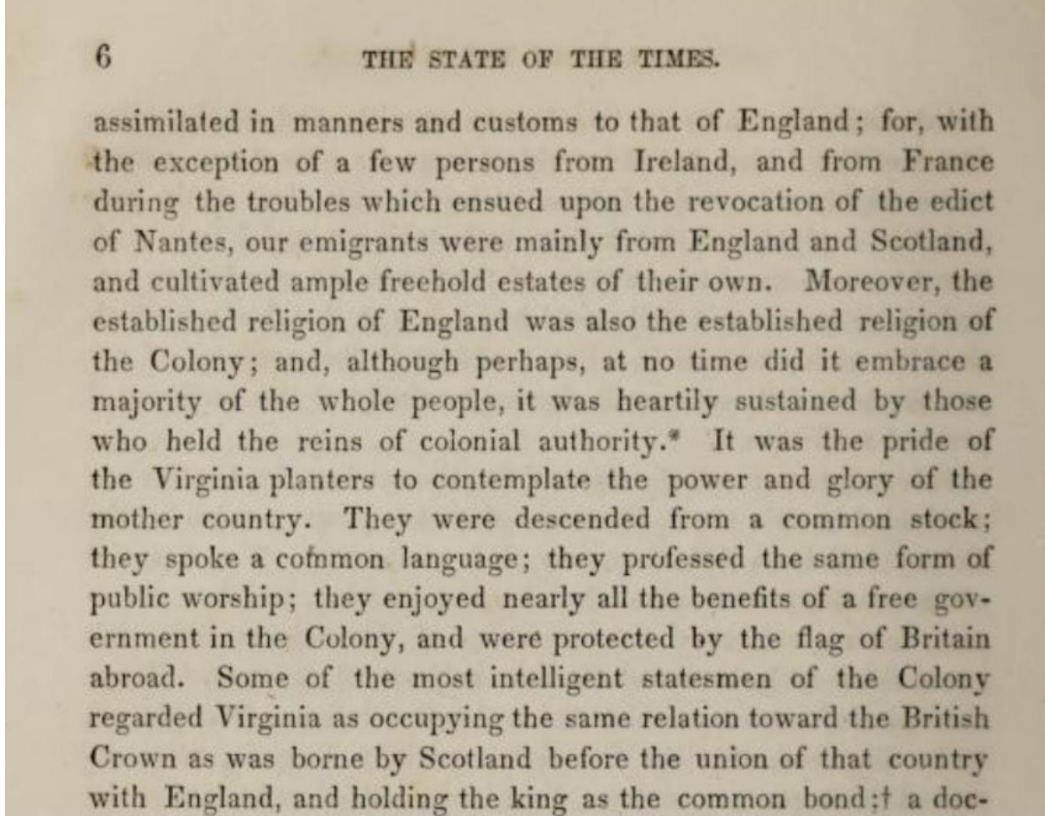
In things that prejudice the tranquillity or security of the state, secret actions are subject to human jurisdiction. But in those which offend the Deity, where there is no public act, there can be no criminal matter, the whole passes betwixt man and God, who knows the measure and time of his vengeance. Now if magistrates confounding things, should in-

* See Aristid. Orat. in Minervam.
† Dionys. Halicarn. on the judgment of Coriolanus, book 7.
‡ *Minervæ calculus.*
§ St. Lewis made such severe laws against those who swore, that the pope thought himself obliged to admonish him for it. This prince moderated his zeal, and softened his laws.—See his Ordinances.

https://archive.org/details/in.ernet.dli.2015.36472

155 years after the mayflower… nearly half the inhabitants of the colonies still embraced the Church of England

[Pg. 6 Moreover, the established religion of England was also the established religion of the Colony; and, although perhaps, at no time did it embrace a majority of the whole people, it was heartily sustained by those who held the reins of colonial authority.* Mr. Jefferson estimated the opponents of the established church at the breaking out of the Revolution, at not more than one-half of the people.



6 THE STATE OF THE TIMES.

assimilated in manners and customs to that of England; for, with the exception of a few persons from Ireland, and from France during the troubles which ensued upon the revocation of the edict of Nantes, our emigrants were mainly from England and Scotland, and cultivated ample freehold estates of their own. Moreover, the established religion of England was also the established religion of the Colony; and, although perhaps, at no time did it embrace a majority of the whole people, it was heartily sustained by those who held the reins of colonial authority.* It was the pride of the Virginia planters to contemplate the power and glory of the mother country. They were descended from a common stock; they spoke a common language; they professed the same form of public worship; they enjoyed nearly all the benefits of a free government in the Colony, and were protected by the flag of Britain abroad. Some of the most intelligent statesmen of the Colony regarded Virginia as occupying the same relation toward the British Crown as was borne by Scotland before the union of that country with England, and holding the king as the common bond;† a doc-

* Mr. Jefferson estimated the opponents of the established church at the breaking out of the Revolution, at not more than one-half of the people.

† Mr. Jefferson and Mr. Wythe held this opinion. Jefferson's Works, Vol. I., 6.

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Massachusetts Constitution, Articles of Amendment, Article 46, ratified and adopted **November 6, 1917**:

> "SECTION 1. No law shall be passed prohibiting the free exercise of religion."

Massachusetts General Laws, c. 272 § 36 (**current law**) :

> Whoever wilfully blasphemes the holy name of God by denying, cursing or contumeliously reproaching God, his creation, government or final judging of the world, or by cursing or contumeliously reproaching Jesus Christ or the Holy Ghost, or by cursing or contumeliously reproaching or exposing to contempt and ridicule, the holy word of God contained in the holy scriptures shall be punished by imprisonment in jail for not more than one year or by a fine of not more than three hundred dollars,

Feedback

Status	•Proprietary colony (1606–1624) •Crown colony (1624–1776)
Religion	Church of England (Anglican)

https://en.wikipedia.org/wiki/Colony_of_Virginia

And lastly, because the principal Effect which we can desire or expect of this Action, is the Conversion and Reduction of the People in those Parts unto the true Worship of God and Christian Religion, in which Respect we should be loath that any Person should be permitted to pass that we suspected to affect the Superstitions of the Church of Rome we do hereby DECLARE, that it is our Will and Pleasure that none be permitted to pass in any Voyage from Time to Time to be made into the said Country, but such as first shall have taken the Oath of Supremacy ; For which Purpose, we do by these Presents give full Power and Authority to the Treasurer for the Time being, and any three of the Council, to tender and exhibit the said Oath, to all such Persons as shall at any Time be sent and employed in the said Voyage

the said Governor and Officers respectively, as well in Cases capital and criminal, as civil, both Marine and other; So always as the said Statutes, Ordinances and Proceedings as near as conveniently may be, be agreeable to the Laws, Statutes, Government, and Policy of this our Realm of *England*. AND we do further of our special Grace, certain Knowledge, and mere Motion, GRANT, DECLARE, and ORDAIN, that such principal Governor, as from Time to Time shall duly and lawfully be authorized and appointed in Manner and Form in these Presents heretofore expressed, shall have full Power and Authority, to use and exercise Martial Law in Cases of Rebellion or Mutiny, in as large and ample Manner as our Lieutenants in our Counties within this our Realm of *England* have or ought to have, by Force of their Commissions of Lieutenancy.

* * * * * * * * *

AND lastly, because the principal Effect which we can desire or expect of this Action, is the Conversion and Reduction of the People in those Parts unto the true Worship of God and Christian Religion, in which Respect we should be loath that any Person should be permitted to pass that we suspected to affect the Superstitions of the Church of *Rome*, we do hereby DECLARE, that it is our Will and Pleasure that none be permitted to pass in any Voyage from Time to Time to be made into the said Country, but such as first shall have taken the Oath of Supremacy; For which Purpose, we do by these Presents give full Power and Authority to the Treasurer for the Time being, and any three of the Council, to tender and exhibit the said Oath, to all such Persons as shall at any Time be sent and employed in the said Voyage. ALTHOUGH express Mention of true yearly Value or Certainty of the Premisses, or any of them, or of any other Gifts or Grants by Us, or any of our Progenitors or Predecessors to the aforesaid Treasurer and Company heretofore made in these Presents, is not made; Or any Act,

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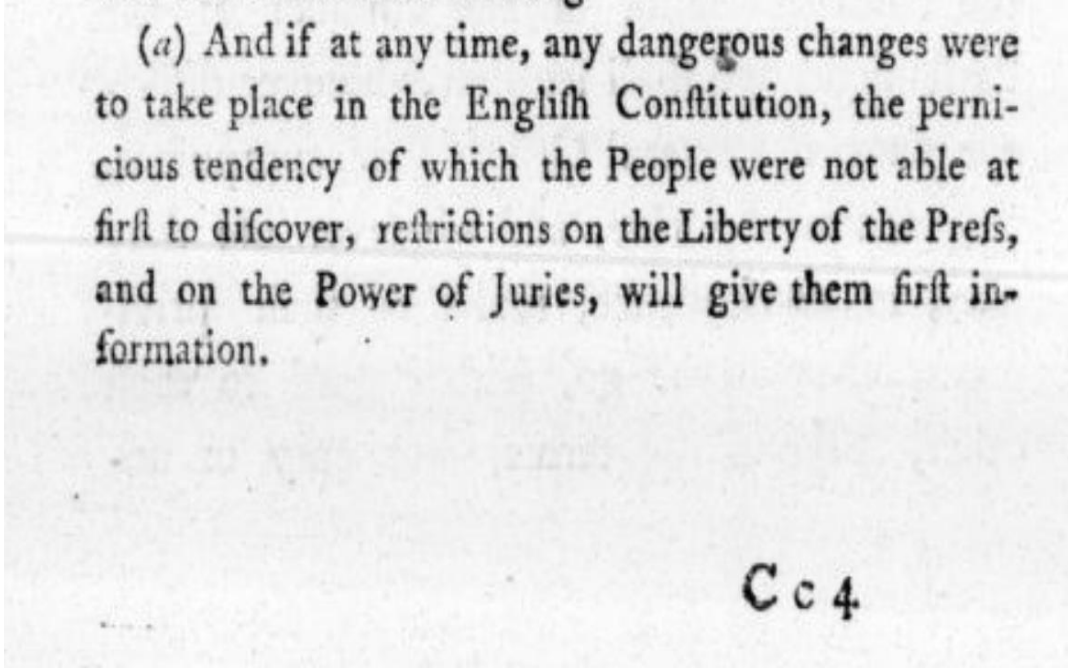
The Takeover of Common Law Courts and Due Process

[…And if at any time, any dangerous changes were to take place in the English Constitution, the pernicious tendency of which the People were not able at first to discover, restrictions on the Liberty of the Press, and on the Power of Juries, will give them first information…]

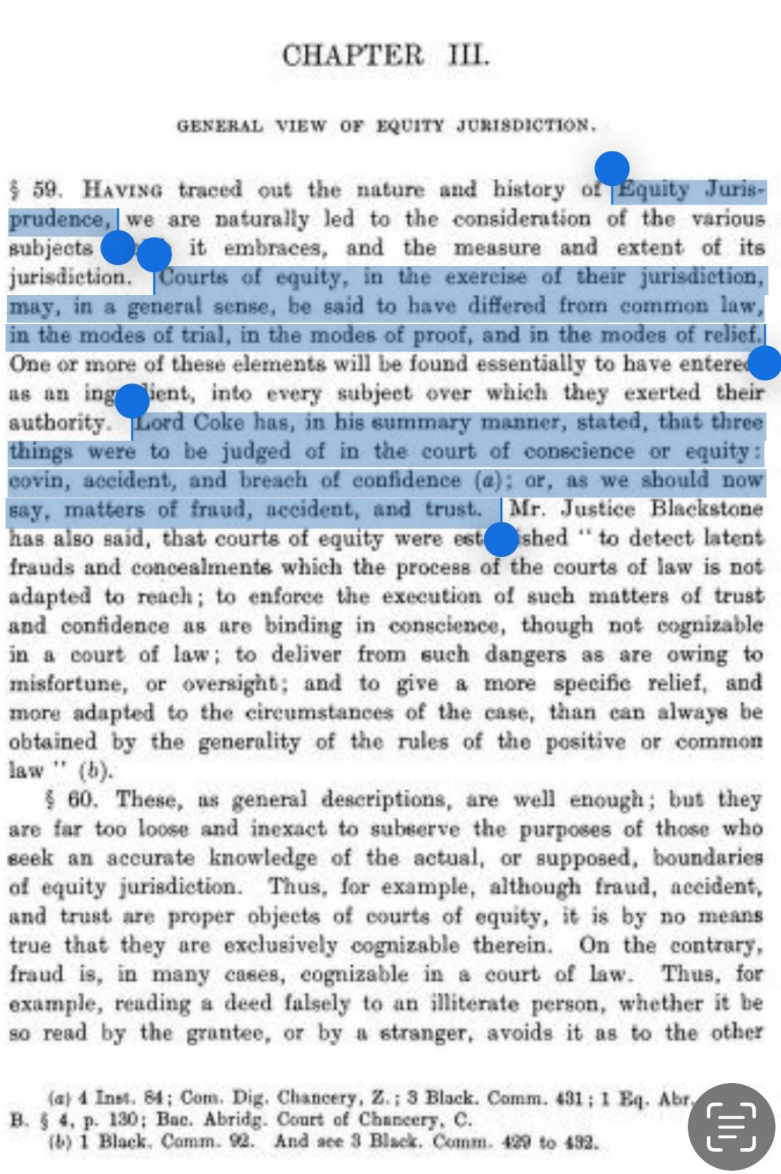


(a) And if at any time, any dangerous changes were to take place in the Engliſh Conſtitution, the pernicious tendency of which the People were not able at firſt to diſcover, reſtrictions on the Liberty of the Preſs, and on the Power of Juries, will give them firſt information.

C c 4

https://archive.org/details/bim_eighteenth-century_the-constitution-of-engl_de-lolme-jean-louis_1777

Lord Coke has, in his summary manner, stated, that three things were to be judged of in the court of conscience or equity: covin, accident, and breach of confidence…] […as we should now say, matters of fraud, accident, and trust…]



CHAPTER III.

GENERAL VIEW OF EQUITY JURISDICTION.

§ 59. Having traced out the nature and history of Equity Jurisprudence, we are naturally led to the consideration of the various subjects which it embraces, and the measure and extent of its jurisdiction. Courts of equity, in the exercise of their jurisdiction, may, in a general sense, be said to have differed from common law, in the modes of trial, in the modes of proof, and in the modes of relief. One or more of these elements will be found essentially to have entered, as an ingredient, into every subject over which they exerted their authority. Lord Coke has, in his summary manner, stated, that three things were to be judged of in the court of conscience or equity: covin, accident, and breach of confidence (a); or, as we should now say, matters of fraud, accident, and trust. Mr. Justice Blackstone has also said, that courts of equity were established "to detect latent frauds and concealments which the process of the courts of law is not adapted to reach; to enforce the execution of such matters of trust and confidence as are binding in conscience, though not cognizable in a court of law; to deliver from such dangers as are owing to misfortune, or oversight; and to give a more specific relief, and more adapted to the circumstances of the case, than can always be obtained by the generality of the rules of the positive or common law" (b).

§ 60. These, as general descriptions, are well enough; but they are far too loose and inexact to subserve the purposes of those who seek an accurate knowledge of the actual, or supposed, boundaries of equity jurisdiction. Thus, for example, although fraud, accident, and trust are proper objects of courts of equity, it is by no means true that they are exclusively cognizable therein. On the contrary, fraud is, in many cases, cognizable in a court of law. Thus, for example, reading a deed falsely to an illiterate person, whether it be so read by the grantee, or by a stranger, avoids it as to the other

(a) 4 Inst. 84; Com. Dig. Chancery, Z.; 3 Black. Comm. 431; 1 Eq. Abr. B. § 4, p. 130; Bac. Abridg. Court of Chancery, C.
(b) 1 Black. Comm. 92. And see 3 Black. Comm. 429 to 432.

https://archive.org/details/cu31924017859871 132

Common pleas, in Great Britain, one of the kings courts, now held in Westminster-Hall. It consists of a chief justice and three other justices, and has cognizance of all civil causes, real, personal or mixed, as well by original writ, as by removal from the inferior courts. A writ of error, in the nature of an appeal, lies from this court to the court of kings bench.

[Notice Below How Webster's does not explain that the "County" court below is no longer "AT-LAW", It is now governed by statute, rather by the common law & the Organic act of the territory]

In some of the American states, a court of *common* pleas is an inferior court, whose jurisdiction is limited to a county, and it is sometimes called a county court. This court is variously constituted in different states, and its powers are defined by statutes. It has jurisdiction of civil causes, and of minor offenses; but its final jurisdiction is very limited; all causes of magnitude being removable to a higher Court by appeal or by writ of error.

https://webstersdictionary1828.com/Dictionary/common

The Common Law -Pg. 317

To understand the meaning and present value of the rule that statutes in derogation of the common law are to be strictly construed, we must keep in mind the feelings of our ancestors in regard to that system of jurisprudence.

They invariably spoke of it with a reverential awe, blended with a tender attachment. Says Lord Coke, "This is another strong argument in law...][...for reason is the life of the law ; nay, the common law itself is nothing else but reason, which is to be understood by an artificial perfection of reason gotten by long study, observation, and experience, and not of every man's natural reason. This legal reason “est summa ratio” and again, "De common droit— of common right—this is by the common law ; because the common law is the best and most common birthright that the subject hath for the safeguard and defense not only of his goods, lands, and revenues, but of his wife and children."]

[The common law of England sometimes is called right, sometimes common right, and sometimes communis justitia.]

[In the grand charter, the common law is called right. “Rectum nulli vende mus, nulli negabimus aut diferemus justitiam vel rectum." ["We must not sell justice to anyone, we will not deny or delay justice or justice to anyone."]

And again, says an old reporter, “The statute law is like a tyrant, where he comes he makes all void; but the common law is like a nursing father, makes only void that part where the fault is, and preserves the rest."]

[It is difficult, if not imposible, now to understand this enthusiastic loyalty to a body of law the most peculiar features of which the activity of the present generation has been largely occupied in uprooting and destroying]

[But to our ancestors the common law represented the old customs of the country, the ancient landmarks of their property and, what was more dear to them still, the common law as opposed to the civil law represented, imperfectly it is true, that irrepressible desire for absolute liberty of thought and speech and action--the chief glory of our race. This is the reason why the common law is the subject of the fervid eulogy of our ancestors, and why the courts saw fit to regard every statutory innovation on its ancient observance with distrust and disfavor]. The condition of things has very essentially altered since the time of Lord Coke. The procedure of the law in which he gloried, is almost wholly effaced ; as far as it relates to real estate, its maxims are in a great measure abrogated ; in regard even to private relations, its doctrines are materially changed..]

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September 20-26, 1693.
Maryland Assembly Proceedings

Comittee adjournes till Munday Morning 9: of the Clocke.
Upon the said Report being read, the house Unanimously agree w the Report of the said Comittee and are of the same opinion.

Moved by a member of the house whether it be not a Grievance to the Subject & in Derogation of the Common Law for the Chancellor to grant an Injunction or give a decree in any cause Contrary to the matter of fact found by a Jury & the matter of Law adjudged by a Court of Common Law in this Province, Especially the Provinciall Court. The same was refferred by the house till further Consideracon
The house adjourns till Munday Morning nine of the Clock

Original Journal.

And the second Bond being taken w^th^out makeing appeare or Expressing either the breach of the first or any Crime Collaterall to it they were both illegally & Unjustly extorted from the Pet^r^ an invasion of the Subjects rights & privilidges in this wee unanimously agree on; as to the last part of the petition wee conceive it does not ly properly before us, The Pet^r^ being left to his remedy at Law.

John Spratt Clk Comittee

Comittee adjournes till Munday Morning 9: of the Clocke.

Upon the said Report being read, the house Unanimously agree w^th^ the Report of the said Comittee and are of the same opinion.

Moued by a member of the house whether it be not a Grievance to the Subject & in Derogation of the Comon Law for the Chancello^r^ to grant an Injunction or give a decree in any cause Contrary to the matter of fact found by a Jury & the matter of Law adjudged by a Court of Comon Law in this Province, Especially the Provinciall Court. The same was refferred by the house till further Consideracōn

The house adjournes till Munday Morning nine of the Clock

Article 7 Principles found in Maryland in 1693 Chancery/Equity Abrogating Common Law

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[regarding to changes in discovery]…It has not been thought necessary to alter the phrases " Court of Chancery " or " courts of equity," but these phrases must be understood, since 1873, to signify the Chancery Division of the High Court of Justice and the Court of Appeal therefrom. In the same way the phrase " courts of common law " means, since the Order in Council made 16th December, 1880, in pursuance of s. 32 of the Judicature Act, 1873, the King's Bench Division of the High Court.

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if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto (a).

Next, as to discovery. Discovery could formerly be obtained only by means of a bill in the Court of Chancery, but power to grant discovery was conferred on the courts of common law by ss. 51 and 52 of the Common Law Procedure Act, 1854.

But this right was only a limited right, and the custom and practice of discovery in the common law courts differed from that prevailing in the Court of Chancery. The present practice in discovery depends "upon the orders and rules of the Judicature Acts." But in them the extended principles of the Court of Chancery were followed rather than the narrower practice of the courts of common law itself derived from the practice in equity (b).

Thus, under the Judicature Act the practice in discovery is a new intermediate practice; but where there is any conflict or variance between the rules of common law and equity, with reference to the same matter, the rule of equity will prevail (c).

The next remedy of the Court of Chancery was the appointment of a receiver. S. 25, sub-s. 8, of the Judicature Act gives power to any division of the High Court to appoint a receiver, a power originally vested only in the Court of Chancery (d).

From the above concise account it will be seen that the changes made by the Judicature Act relate in a very slight degree, if at all, to the principles of equity jurisprudence which are the subject of the present treatise (e).

It has not been thought necessary to alter the phrases "Court of Chancery" or "courts of equity," but these phrases must be understood, since 1873, to signify the Chancery Division of the High Court of Justice and the Court of Appeal therefrom. In the same way the phrase "courts of common law" means, since the Order in Council made 16th December, 1880, in pursuance of s. 32 of the Judicature Act, 1873, the King's Bench Division of the High Court.

(a) An injunction may still be granted to restrain a person from *instituting* proceedings (*Besant* v. *Wood*, 12 Ch. D. 630). So, too, an injunction may be granted to restrain proceedings in inferior courts, or in tribunals constituted for a special purpose, or in tribunals of foreign countries. See Annual Practice, and Kerr on Injunctions, 3rd ed., pp. 576-7. The same sub-section provides that any court may stay proceedings in any matter before it.

(b) *Jones* v. *Monte Video Gas Co.*, 5 Q. B. D. 556, per Brett, L.J., at 558.

(c) *Bustros* v. *White*, 1 Q. B. D. 496. The present practice as to discovery is regulated by Ord. xxxi. R. S. C. (1883). See *infra*, § 1480.

(d) See, as to the grounds on which the Court of Chancery appointed a receiver, *infra*, § 829 and following sections.

(e) Since the Judicature Act, 1873, the Lord Chancellor has not sat as a Judge of a Court of First Instance; and since the Judicature Act, 1881 (44 & 45 Vict. c. 68), the Master of the Rolls has been a Judge of Appeal only. Since the Judicature Act, 1873, no new Vice-Chancellor has been created, and the old Court of Chancery Appeal was merged in the Court of Appeal of the Supreme Court by the same enactment.

[….a tendency the existence and justice of which found recognition in the provision of the English Judicature Act of 1873: That when equity and common law conflict, equity shall prevail. 2 Indeed, the adoption by the common law of many doctrines which were originally purely equitable, has been so complete that it has often been seriously, though unsuccessfully, contended that the jurisdiction originally exercised by courts of equity in like cases should now be regarded as abrogated. 3

ing the maxim itself. *Lex sequitur equitatem* would apply about as often as *Equitas sequitur legem.* Many doctrines of the modern common law "seem grounded on the fact that similar decisions had previously been made in courts of equity." It is impossible to deny "the constant progress of law in the direction of equity under the superior attractive force of the latter;" [1] a tendency the existence and justice of which found recognition in the provision of the English Judicature Act of 1873: That when equity and common law conflict, equity shall prevail.[2] Indeed, the adoption by the common law of many doctrines which were originally purely equitable, has been so complete that it has often been seriously, though unsuccessfully, contended that the jurisdiction originally exercised by courts of equity in like cases should now be regarded as abrogated.[3]

If there is one maxim cited more frequently than another as being both fundamental in its nature and universal in its applicability, it is the phrase, *Actus non facit reum, nisi mens sit rea;* or, as it is sometimes expressed, *Non est reus, nisi mens sit rea.* No less a personage than the late Chief-Justice Cockburn affirmed that this maxim "is the foundation of all criminal justice."[4] Yet even this phrase has been severely criticised by a judge who had

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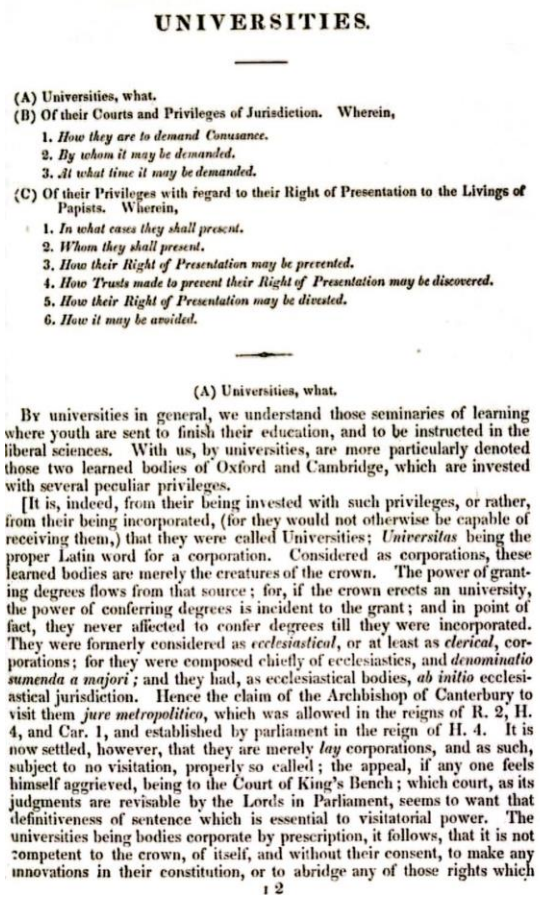
[…With us, by universities, are more particularly denoted those two learned bodies of Oxford and Cambridge, which are invested with several peculiar privileges, (for they would not otherwise be capable of receiving them,) that they were called Universities; Universitas being the proper Latin word for a corporation. Considered as corporations, these learned bodies are merely the creatures of the crown. The power of granting degrees flows from that source; for if the crown erects an university, the power of conferring degrees is incident to the grant, and in point of fact, they never affected to confer degrees till they were incorporated.

They were formerly considered as ecclesiastical, or at least as clerical, corporations; for they were composed chiefly of ecelesiasties, and denominatio sumenda a majori; [the denomination to be taken from the elder] and they had, as ecclesiastical bodies, ab initio ecclesiastical jurisdiction [from the beginning] Hence the claim of the Archbishop of Canterbury to visit them jure metropolitico [metropolitan law]…]



UNIVERSITIES.

(A) Universities, what.
(B) Of their Courts and Privileges of Jurisdiction. Wherein,
1. *How they are to demand Conusance.*
2. *By whom it may be demanded.*
3. *At what time it may be demanded.*
(C) Of their Privileges with regard to their Right of Presentation to the Livings of Papists. Wherein,
1. *In what cases they shall present.*
2. *Whom they shall present.*
3. *How their Right of Presentation may be prevented.*
4. *How Trusts made to prevent their Right of Presentation may be discovered.*
5. *How their Right of Presentation may be divested.*
6. *How it may be avoided.*

(A) Universities, what.

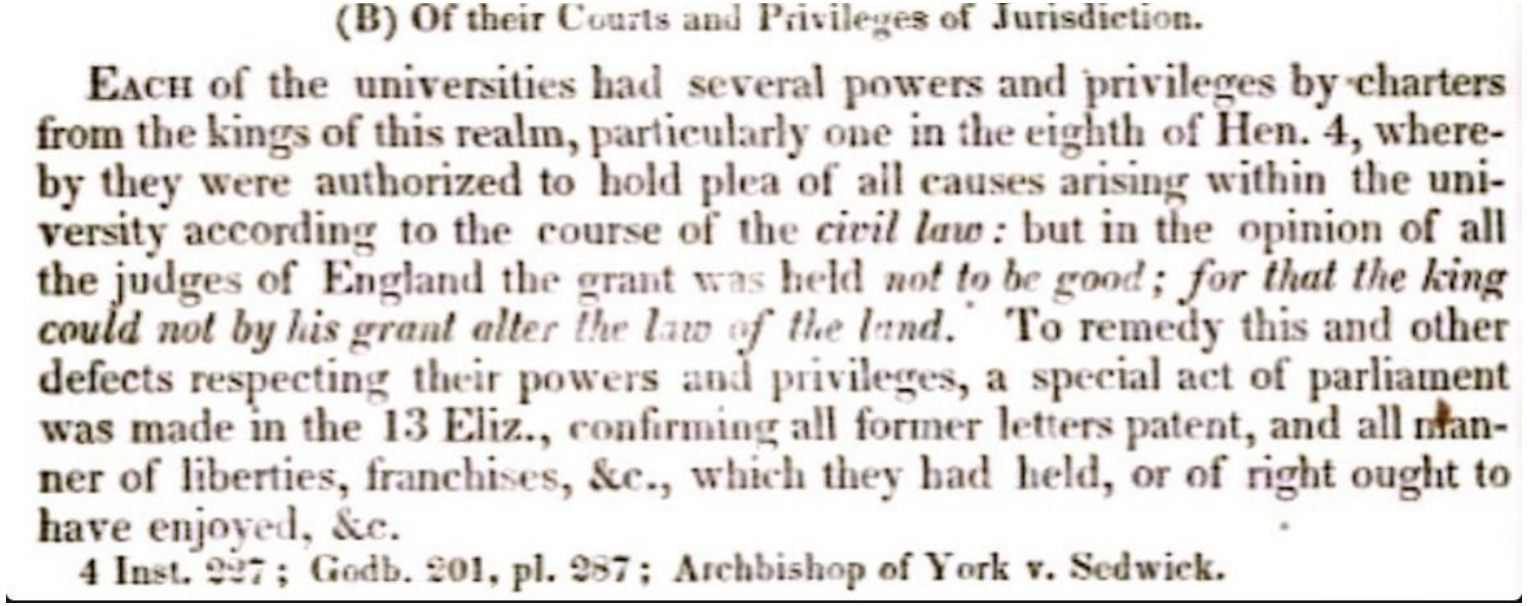
By universities in general, we understand those seminaries of learning where youth are sent to finish their education, and to be instructed in the liberal sciences. With us, by universities, are more particularly denoted those two learned bodies of Oxford and Cambridge, which are invested with several peculiar privileges.

[It is, indeed, from their being invested with such privileges, or rather, from their being incorporated, (for they would not otherwise be capable of receiving them,) that they were called Universities; *Universitas* being the proper Latin word for a corporation. Considered as corporations, these learned bodies are merely the creatures of the crown. The power of granting degrees flows from that source; for, if the crown erects an university, the power of conferring degrees is incident to the grant; and in point of fact, they never affected to confer degrees till they were incorporated. They were formerly considered as *ecclesiastical*, or at least as *clerical*, corporations; for they were composed chiefly of ecclesiastics, and *denominatio sumenda a majori*; and they had, as ecclesiastical bodies, *ab initio* ecclesiastical jurisdiction. Hence the claim of the Archbishop of Canterbury to visit them *jure metropolitico*, which was allowed in the reigns of R. 2, H. 4, and Car. 1, and established by parliament in the reign of H. 4. It is now settled, however, that they are merely *lay* corporations, and as such, subject to no visitation, properly so called; the appeal, if any one feels himself aggrieved, being to the Court of King's Bench; which court, as its judgments are revisable by the Lords in Parliament, seems to want that definitiveness of sentence which is essential to visitatorial power. The universities being bodies corporate by prescription, it follows, that it is not competent to the crown, of itself, and without their consent, to make any innovations in their constitution, or to abridge any of those rights which

1 2

https://archive.org/details/newabridgmentofl10baco

Each of the universities had several powers and privileges by charters from the kings of this realm, particularly one in the eighth of Hen. 4, whereby they were authorized to hold plea of all causes arising within the university according to the course of the civil law: but in the opinion of all the judges of England the grant was held not to be good; for that the king could not by his grant alter the law of the land.'



(B) Of their Courts and Privileges of Jurisdiction.

EACH of the universities had several powers and privileges by charters from the kings of this realm, particularly one in the eighth of Hen. 4, whereby they were authorized to hold plea of all causes arising within the university according to the course of the *civil law*: but in the opinion of all the judges of England the grant was held *not to be good; for that the king could not by his grant alter the law of the land.* To remedy this and other defects respecting their powers and privileges, a special act of parliament was made in the 13 Eliz., confirming all former letters patent, and all manner of liberties, franchises, &c., which they had held, or of right ought to have enjoyed, &c.

4 Inst. 227; Godb. 201, pl. 287; Archbishop of York v. Sedwick.

Due course =Due process of Common Law

NOT due course of Civil Law

https://archive.org/details/newabridgmentofl10baco

The new judges were prevented everywhere from proceeding with the business of the courts, which were obstructed by assemblies of the people, who would permit no judge to exercise his functions, save in accordance with the ancient laws and usages of the colony..]

This Congress, which sat from the 5th of September to the 26th of October, 1774, had thus made the restoration of commercial intercourse between the colonies and other parts of the British empire to depend upon the repeal by Parliament of the obnoxious measures of which they complained, and upon the recognition of the rights which they asserted; for although their acts had not the foundation of laws, the general adoption of their recommendations throughout the colonies gave them a power that laws rarely possess. Before they adjourned, they recommended that another Congress of all the colonies should be held at Philadelphia on the 10th of the following May, unless their grievances were redressed before that time, and that the deputies to such new Congress should be chosen immediately.[1]

But while the Continental Congress were engaged in the adoption of these measures of constitutional resistance, and still acknowledged their colonial relations to the imperial government, the course of events in Massachusetts had put an end to the forms of law and government in that colony, as established or upheld by imperial authority. This assembly, the last to be held in the province upon the principles of the charter, had been dissolved by the governor's proclamation, at Salem, on the 17th of June, 1774. The new law for the alteration of the government had taken effect; and in August the governor received from England a list of thirty-six councillors, who were to be called into office by the king's writ of *mandamus*, instead of being elected, as under the charter, by the House of Representatives. Two thirds of the number accepted their appointment; but popular indignation, treating them as enemies of their country, compelled the greater part of them to renounce their offices. The new judges were prevented everywhere from proceeding with the business of the courts, which were obstructed by assemblies of the people, who would permit no judge to exercise his functions, save in accordance with the ancient laws and usages of the colony.

Writs had been issued for a new General Assembly, which was to meet at Salem in October; but it was found that, while the old constitution had been taken away by act of Parliament, the new one had been rejected by the people. The compulsory resig-

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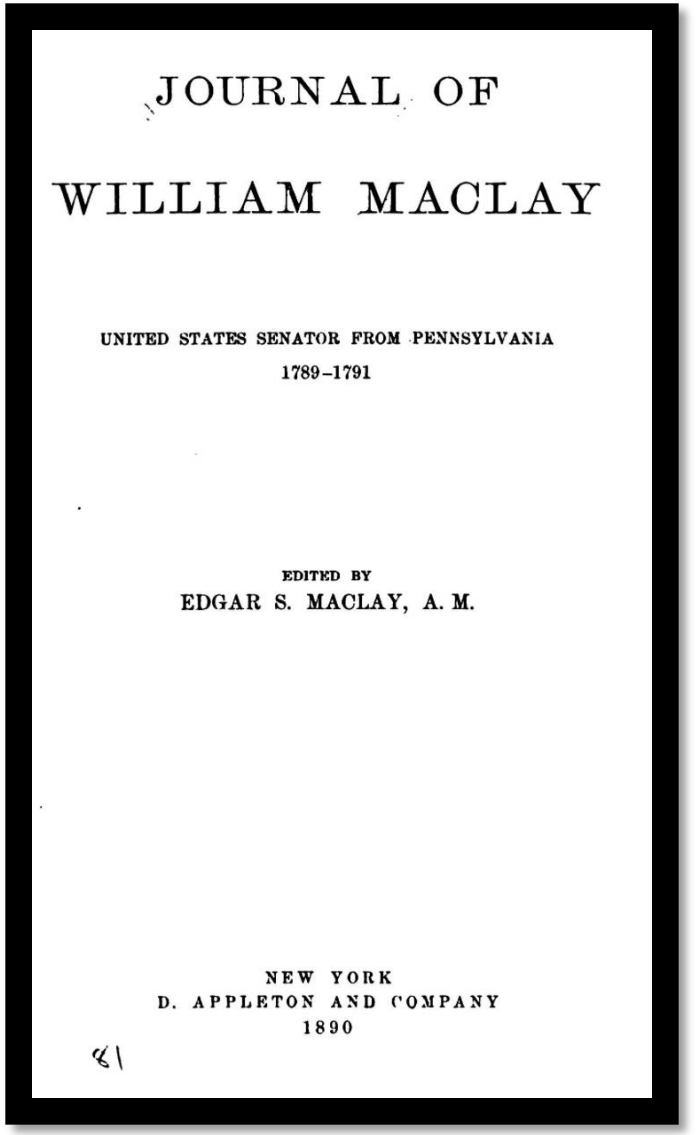
William Maclay

The journal of William Maclay, beginning with the 24th of April, 1789, and ending on the 3d of March, 1791, gives a graphic description of the debates, ceremonies, and social life of that important period of our national existence. Some hesitancy has been felt in giving an unreserved publication of this journal to the world, owing to the severity of the criticisms made on prominent personages, which in a large degree serve to dispel the roseate illusions in reference to men of that day.

Pg. iv
William Maclay, like many of those who were actively engaged in the Revolution, was of -Scotch descent, his father, Charles Maclay, having sailed for America in 1734. The brothers of Willim Maclay were also active in the movements which led to the overthrow of British supremacy in America ; his brother, the Hon. John Maclay, being a member of that conference held in "Carpenters' Hall" which declared that " they, in behalf of the people of Pennsylvania, were .willing to concur in a vote of Congress declaring the United Colonies free and independent States." John Maclay also served three terms in the Pennsylvania Legislature, 1790, 1792, and 1794. Another brother of William Maclay, the Hon. Samuel Maclay, was chosen Speaker of the Pennsylvania State Senate, of which body he was a member from 1797 to 1802, and resigned in 1802 in order to serve in the United States Senate, where he represented Pennsylvania from 1802 to 1809.


JOURNAL OF

WILLIAM MACLAY

UNITED STATES SENATOR FROM PENNSYLVANIA
1789–1791

EDITED BY
EDGAR S. MACLAY, A. M.

NEW YORK
D. APPLETON AND COMPANY
1890

https://archive.org/details/cu31924030423796

Pg. 98. […the jury should find the breach and the judges assess the damages. attacked this mixed, half-common law, half-chancery proceeding ; accused the bill of inconsistency; that a clause had already been adopted which excluded chancery where common law would afford a remedy. Here we had a jury and common law acting with the cause, and we flew from it to chancery powers.
This was inconsistency. The jury were the proper chancellors in such a case to assess the damages; and I liked them much better than the judges. They were from the vicinity, and best acquainted with the parties and their circumstances. When the judgment was by default or entered up, a jury of inquiry of damages should ascertain the sum.
Strong made a long speech how this could not be done on the principles of common law. and chancery principles, and seemed willing to show his accurate reading on these points, and concluded by saying either he or the gentleman last up did not understand the principles of these courts, for the gentleman was for doing what he thought could not be done. I rose quick to reply. Said the clause was before us the clause was in our power-what I wanted done was clearly expressed

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that on bonds, articles of agreement, covenants, etc., the jury should find the breach and the judges assess the damages. I attacked this mixed, half-common law, half-chancery proceeding; accused the bill of inconsistency; that a clause had aleady been adopted which excluded chancery where common law would afford a remedy. Here we had a jury and common law acting with the cause, and we flew from it to chancery powers. This was inconsistency. The jury were the proper chancellors in such a case to assess the damages; and I liked them much better than the judges. They were from the vicinity, and best

E Q U

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right to claim. It is the treating of a person according to justice and reason.

The Lord shall judge the people with *equity*. Ps. xcviii.

With righteousness shall he judge the poor, and *reprove* with *equity*. Is. xi.

2. Justice; impartiality; a just regard to right or claim; as, we must, in *equity*, allow this claim.

3. In *law*, an equitable claim. "I consider the wife's *equity* to be too well settled to be shaken." *Kent.*

4. In *jurisprudence*, the correction or qualification of law, when too severe or defective; or the extension of the words of the law to cases not expressed, yet coming within the reason of the law. Hence a court of equity or chancery, is a court which corrects the operation of the literal text of the law, and supplies its defects, by reasonable construction, and by rules of proceeding and deciding, which are not admissible in a court of law. Equity then is the law of reason, exercised by the chancellor or judge, giving remedy in cases to which the courts of law are not compe

w this could not be done on
ıd chancery principles, and
ıte reading on these points,
e or the gentleman last up
of these courts, for the gen-
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done was clearly expressed

Up now rose Elsworth, and in a most elaborate harangue supported the clause ; now in chancery, now in common law, and now common law again, with a chancery side~~~~He brought forward Judge Blackstone, and read much out of him. Patterson rose in reply, and followed him through these thorny paths, as I thought, with good success. He showed, justly enough, that Blackstone cut both ways, and nothing could be inferred from him but his ridiculing the diversity of practice between chancery practice and that of common law.

Journal of William MaclayUnited States senator from Pennsylvania,
1789-1791 Pg.92
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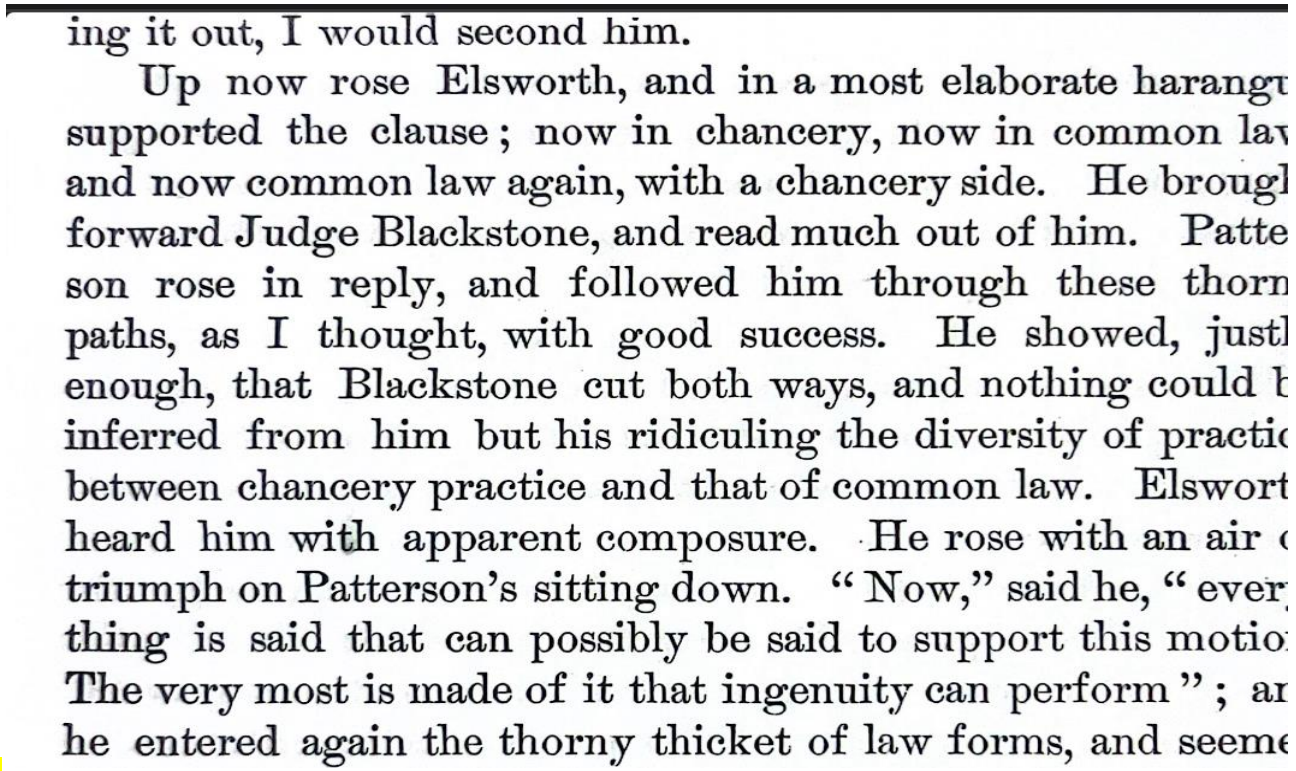

ing it out, I would second him.

Up now rose Elsworth, and in a most elaborate harangu supported the clause; now in chancery, now in common law and now common law again, with a chancery side. He brough forward Judge Blackstone, and read much out of him. Patte son rose in reply, and followed him through these thorn paths, as I thought, with good success. He showed, justl enough, that Blackstone cut both ways, and nothing could b inferred from him but his ridiculing the diversity of practic between chancery practice and that of common law. Elswort heard him with apparent composure. He rose with an air triumph on Patterson's sitting down. "Now," said he, "ever thing is said that can possibly be said to support this motio The very most is made of it that ingenuity can perform"; ar he entered again the thorny thicket of law forms, and seeme

Izard got up. He dwelt almost entirely on the antiquity of kingly government. He could n
however, well get further back than Philip of Macedon. He seemed to have forgot both H
and the Bible. He urged for something equivalent to nobility having been common among
Eomans, for they had three names that seemed to answer to honorable, or something like
before and something behind. He did not say Esquire. Mr. Carrol rose and took my side o
question. He followed nearly the track I had been in, and dwelt much on the information
was now abroad in the world. He spoke against kings. Mr. Lee and Mr. Izard were both u
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to answer new points during the debate.I collected myself for a last effort. I read the clau
Constitution against titles of nobility ; showed that the spirit of it was against not only g
titles by Congress, but against the permission of foreign potentates granting any titles wh
that as to kingly government, it was equally out of the question, as a republican governm
guaranteed to every State in the Union ; that they were both equally forbidden fruit of th
Constitution. I called the attention of tlie House to the consequences that were like to fo
that gentlemen seemed to court a rupture with the other House. The Representatives had
the report, and were this day acting on it, or according to the spirit of the report. We wer
proposing a title. Our conduct would mark us to the world as actuated by the spirit of
dissension, and the characters of the Houses would be as aristocratic and democratical.

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thority.

Izard got up. He dwelt almost entirely on the antiquity of kingly government. He could not, however, well get further back than Philip of Macedon. He seemed to have forgot both Homer and the Bible. He urged for something equivalent to nobility having been common among the Romans, for they had three names that seemed to answer to honorable, or something like it, before and something behind. He did not

say Esquire. Mr. Carrol rose and took my side of the question. He followed nearly the track I had been in, and dwelt much on the information that was now abroad in the world. He spoke against kings. Mr. Lee and Mr. Izard were both up again. Elsworth was up again. Langdon was up several times, but spoke short each time. Patterson was up, but there was no knowing which side he was of. Mr. Lee considered him as against him and answered him, but Patterson finally voted with Lee. The Vice-President repeatedly helped the speakers for titles. Elsworth was enumerating how common the appellation of President was. The Vice-President put him in mind that there were presidents of fire companies and of a cricket club. Mr. Lee at another time was saying he believed some of the States authorized titles by their Constitutions. The Vice-President, from the chair, told him that Connecticut did it. At sundry other times he interfered in a like manner. I had been frequently up to answer new points during the debate.

I collected myself for a last effort. I read the clause in the Constitution against titles of nobility; showed that the spirit of it was against not only granting titles by Congress, but against the permission of foreign potentates granting *any titles whatever;* that as to kingly government, it was equally out of the question, as a republican government was guaranteed to every State in the Union; that they were both equally forbidden fruit of the Constitution. I called the attention of the

ENORMOUS EXPENSE OF ENGLISH JUDICIARY.

Pg. 95

The clause was taken up of the Judiciary bill " that suits in equity shall not be sustained in either of the courts of the United States in any case where a remedy may be had at law." Dr. Johnson rose first against the clause. Elsworth answered him, and the follow, ing gentlemen all in turn: Lee, Read, Bassett, Patterson, and Grayson. Strong spoke in favor of the clause. The lawyers were in a rage for speaking. Many things were said in favor of chancery that I knew to be wrong. Never was there a field more beaten, from the first Chancellor down. The lawyers seemed all prepared to show their extensive reading.

It was near three, and I determined to say something. A case was often put of a man covenanting to convey land and dying before performance; that there was no relief without chancery. I, however, rose, said much information had been given on this important subject, but I wished for a great deal more. For instance, I desired to know the number of attorneys and persons employed in the law department in England, and the millions (for it was said to amount to several annually) extorted by the law department from that nation; particularly whether the sum so extracted did not exceed the aggregate of the sums in dispute before the courts. Whether any nation in the world, besides the English, would pay their taxes and support any such expensive judiciary; that these points being settled would afford matter of important advice to us, whether it was prudent to imitate the famous English jurisprudence in all its parts; that the advantages of chancery were to my certain knowledge overstated; that the famous case of the bond performance gave little trouble in Pennsylvania; that the person having paid his bond, brought his suit, and the parties generally consented to a judgment and the sale of the lands, and the sheriff made title; that I thought the clause a good one, and wished it to be more eflectual to prevent the flow of causes into that tedious court.

Up rose George Read in angry mood. Said he had a cause of that kind in Pennsylvania; that he had consulted the ablest men there and received for answer [that] there was no remedy in Pennsylvania, and asserted that the people of Pennsylvania wished for chancery, and many of then lamented the want of it.

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I got up ; declared, as far as I knew the sentiments of the people of Pennsylvania, they disliked a chancery, but that many of them knew not even the name. I never heard any people speak in favor of it, but some gentlemen of the bar, and even among them some doubted whether it would do most harm or good ; that in the general it was considered by those who knew anything of the matter, as the field where the gentlemen of the bar would reap the fullest harvest, and it was considered that they enjoyed a plentiful crop as matters stood now. I stated the affair of the bond over again so plainly that Reed called out, " In case of consent, I grant it." I had only to add, in case they do not consent, twelve honest jurors are good chancellors, if not to give the land, at least to give the value of it.

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This day the discrimination between the ships of nations in treaty and those not, on the Tonnage bill, was rejected in the House of Representatives also, and, of course, the Tonnage bill now passes. When this doctrine was first broached in the House of Representatives, of no discrimination, it was called "Toryism," and there were but eight votes for it on a division. But mark the influence of the city of New York, or let me call it British influence. To work they set in the Senate, and, before the Impost bill got up, they had secured a majority to reject the discrimination. But some pretext was necessary even in the Senate. The discriminations in the Impost and Tonnage bills were said to be arrant trifles; no compensation for the injuries our trade received; that a deeper mode of retaliation should be entered on—such as would effectually cure all disadvantages and carry the remedy to every particular disease and retaliate on every nation, exactly in kind; and where a disadvantage was imposed a corresponding one should be imposed by us, and not chastise all nations out of treaty with the same punishment. As to gratitude or national friend-

[1791] July 2d. — Went this day to the HaU at the usual time. The bin for the judiciary was taken up. I reaUy dislike the whole of this bill, but I endeavored to mend it in several places and make it as perfect as possible, if it is to be the law of the land. But it was fabricated by a knot of lawyers, who joined hue and cry to run down any person who will venture to say one word about it. This I have repeatedly experienced, and when I am certain (for a man may sometimes be certain of being right) of having made obvious and proper amendments, I have been pushed at from both *ight and left by them, and not a man to second me. Be it so, however ; this is no reason that I should be silent. I ran Elsworth hard on the uselessness of part of this bill to-day, and thought I had the advantage in some of the answers I gave. But it was of little avail. Grayson, though a lawyer, told me yesterday that it was in vain to attempt anything. The people who were not lawyers, on a supposition that lawyers knew best, would follow the lawyers, and a party were determined to push it. I needed no information from him on this head.

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ship, they were held not to exist, and all that was to be done with nations in treaty was to observe the terms of those treaties. A committee, therefore, of Mr. Morris, Mr. Langdon [names left blank], was appointed to examine the state of our commerce, and to bring in a bill for the protection of our commerce. But the discriminations are now struck out of both bills, and I do not expect to hear anything more about the protecting of our commerce unless it should be taken up in the House of Representatives.

Madison, too, is charged with having labored [for] the whole business of discrimination in order to pay court to the French nation through Mr. Jefferson, our Minister to Paris. I feel much readier to believe him guilty of another charge—viz., his urging the doctrine of taking away the right of removals of officers from the Senate in order to pay his court to the President, whom, I am told, he already affects to govern. Time will, however, throw light on both these subjects. *Mem.* It has done so in a remarkable manner in one of them. *Vide* 14th February, 1791.

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We, however, came to a clause, the import of which was

I attacked this mixed, half-common law, half-chancery proceeding ; accused the bill of inconsistency ; that a clause had aleady been adopted which excluded chancery where common law would afford a remedy. Here we had a jury and common law acting with the cause, and we flew from it to chancery powers. This was inconsistency.The jury were the proper chancellors in such a case to assess the damages ; and I liked them much better than the judges. They were from the vicinity, and best acquainted with the parties and their circumstances. When the judgment was by default or entered up, a jury of inquiry of damages should ascertain the sum.~~~~of damages should ascertain the sum. Strong made a long speech how this could not be done on the principles of common law- and chancery principles, and seemed wiUing to show his accurate reading on these points, and concluded by saying either he or the gentleman last up did not understand the principles of these courts, for the gentleman was for doing what he thought could not be done. I rose quick to reply. Said the clause was before us — ^the clause was in our power — what I wanted done was clearly expressed [in the clause]. I hoped we were not always to be trammeled with the fetters of English jurisprudence ; that we would show [that] we had judgment and would act for ourselves, independent of any forms, and concluded with a question whether we were always to be considered as empty bottles, that could' contain nothing but what was poured into them. Several gentlemen now rose and agreed mth me in objecting to the clause. But there seemed some difficulty in amending, and it was postponed for amendment.

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that on bonds, articles of agreement, covenants, etc., the jury should find the breach and the judges assess the damages. I attacked this mixed, half-common law, half-chancery proceeding ; accused the bill of inconsistency ; that a clause had aleady been adopted which excluded chancery where common law would afford a remedy. Here we had a jury and common law acting with the cause, and we flew from it to chancery powers. This was inconsistency. The jury were the proper chancellors in such a case to assess the damages ; and I liked them much better than the judges. They were from the vicinity, and best acquainted with the parties and their circumstances. When the judgment was by default or entered up, a jury of inquiry of damages should ascertain the sum.

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July 3d.—This [day] was warm ; quite as much so, I thought, as any day I remember in Pennsylvania. Attended at the Hall. Business went on at the usual time. It was the judiciary which we were upon. Light and very trifling debates in general. Mr. Read got up and kept "hammering" for a long time (as Mr. Morris termed it), and really it was difficult to say what he would be at.

I did not embark in any debate until we came to the clause empowering the judges, either on their own knowledge or

Pg. 99. I did not embark in any debate until we came to the clause empowering the judges, either on their own knowledge or complaint of others, to apprehend, bail, commit, etc. I alleged that the judges would be men of like passions and resentments as other men ; that they should not be both witnesses and judges, accusers and all ; that the complaint also should be on oath. I moved, therefore, to strike out those words and insert " upon oath or .affirmation made and reduced to writing and signed by the party, stating sufficient reason in law." Lee, of Virginia;, seconded me this time. But, according to custom, I had Elsworth and the gentlemen of the bar up against it. It was insisted that this was agreeable to the laws of England ; that the oath of the judge would bind him to all tliis; that a judge had a right to use his private judgment, just as a juryman had a right to act on his private knowledge. Elsworth, Strong, Bassett, Grayson, and others, all up, and volumes did they pour out.I could not get speaking for a long time. I, however, made a short reply ; said we were now framing the law which would be the rule of conduct for the judges; that practice, such as the gentlemen insisted on, had been used by judges ; and, from experience, we had learned the danger of it. Cases were known where the resentment of a judge was the accusing spirit and prejudice pronounced judgment. Every part of English jurisprudence was not unexceptional, nor would I blindly follow them in everything ; that the case adduced of a juryman using private knowledge would not apply. A juryman, legally speaking, had no private knowledge, or at least none that he ought to keep private. If he knew anything pertinent to the issue, he ought to disclose it upon oath to his fellows in court ; and this was the law in daily practice iipon it. If a judge happened to be the only person having knowledge of the commission of a crime, let him apply to some other justice.

Elsworth has credit with me. I know not, however, whether it be the effect of judgment, whim, or caprice, but he is generally for limiting the chancery powers. Mr. Morris and myself differed in every vote this day. We always have differed on the subject of chancery.

" Sir, I am no professed admirer of the judicial system before you, but the best part of it is the Circuit Courts. These, sir, the amendment of yesterday will render abortive. The seeds of appeal, and the materials, too, provide for every cause. The system of delay is so firmly established, and the certainty of procrastination such, that justice can never be obtained in it. Let us follow the scheme a moment : The dispositions are taken and carried up six hundred or seven hundred miles to a Federal court. But, by the law, they can not be used, if the party is able to attend. The witness is subpoenaed, but does not attend. An attachment issues, but the party will kill the messenger, run to the woods, fly to the Indians, rather than attend. "Well, but the court can issue a dedidamus potestatum, and commissioners may be appointed; and in three or four years the testimony may be collected. Well, and what now ? Is the fact to be tried by chancery powers ? I am bold to say that no issue of fact was ever tried or found, for or against, in chancery. Facts often were carried into chancery, as evidence, but if they were doubted of, issue was joined on them, and directed to be tried by a jury. But now the business unfolds itseM. N^ow we see what gentlemen would be at. It is to try facts on civil-law principles, without the aid of a jury, and this, I promise you, never will be submitted to." The question was put, and we carried it. But the House seemed rather to break up in a storm

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[Here a leaf of the Maclay journal, under the date of Saturday, July 10th, has been destroyed. The next entry is made under date of July 11, 1789, as follows:]

"Should go to the nearest stack of wheat, rye, hay, straw, or such like material, and draw out two stems, one in the name of each party, and the longest should win the cause." He showed it to me. I gave him a hearty laugh of approbation. Not, indeed, that I admired either the wit or novelty of it; but I considered it as the index of a sure vote. But I was mistaken. He voted against us, and the clause was lost.

I could see an air of triumph in the visages of gentlemen of the bar, Elsworth excepted, who has really credit with me on the whole of this business. The part he has acted in it I consider as candid (bating his caballing with Johnson), and disinterested. Mr. Lee, of Virginia, was for the clause, and spoke well. As we came down the stairs, Dr. Johnson was by my side. "Doctor," said I, "I wish you would leave off using these side-winds, and boldly, at once, bring in a clause for deciding all causes on civil-law principles, without the aid of a jury." "No, no," said he, "the civil law is a name I am not very fond of." I replied, "You need not care about the name, since you have got the thing."

July 12th, Sunday.—I was ill last night. My swelled

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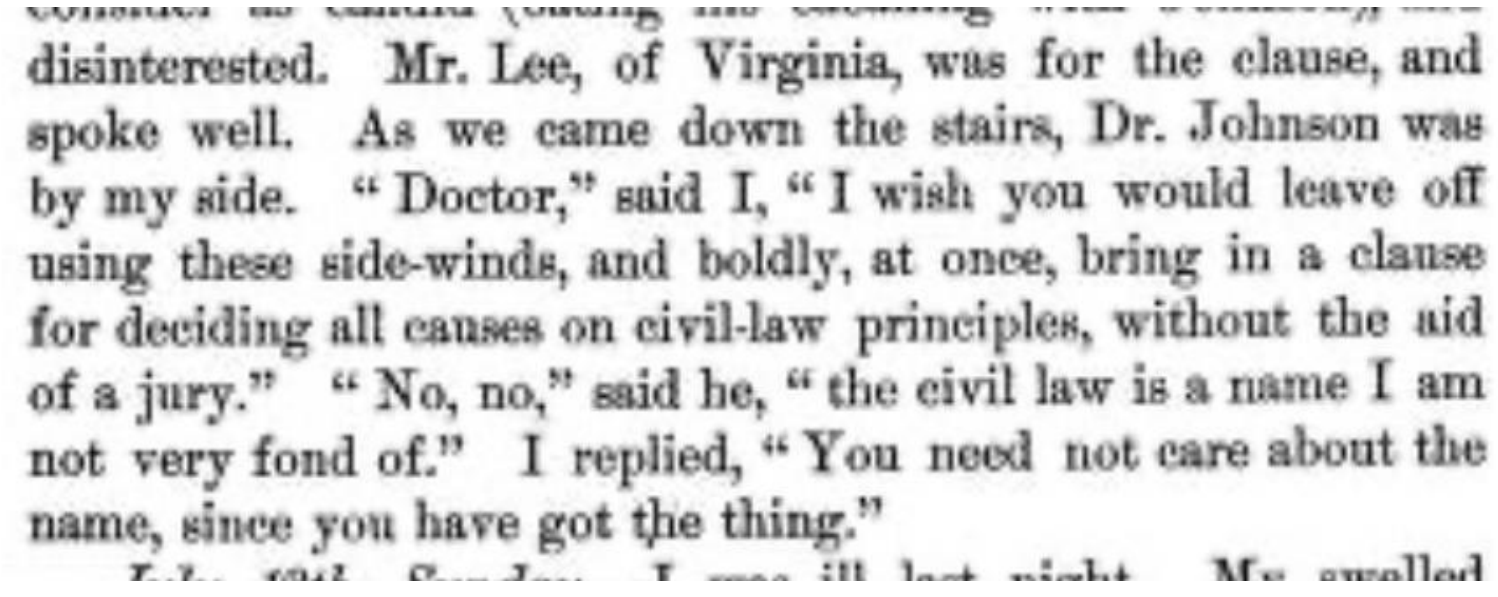

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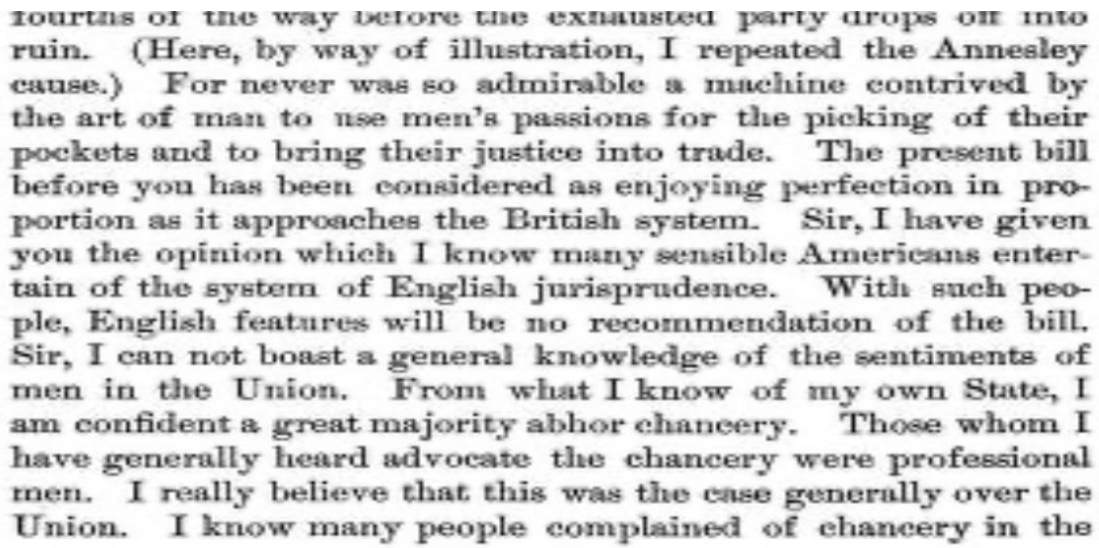
For never was so admirable a machine contrived by the art of man to use men's passions for the picking of their pockets and to bring their justice into trade. The present bill before you has been considered as enjoying perfection in proportion as it approaches the British system. Sir, I have given you the opinion which I know many sensible Americans entertain of the system of English jurisprudence. "With such people, English features will be no recommendation of the bill. Sir, I can not boast a general knowledge of the sentiments of men in the Union. From what I know of my own State, I am confident a great majority abhor chancery. Those whom I have generally heard advocate the chancery were professional men. I really believe that this was the case generally over the Union.


fourths of the way before the exhausted party drops off into ruin. (Here, by way of illustration, I repeated the Annesley cause.) For never was so admirable a machine contrived by the art of man to use men's passions for the picking of their pockets and to bring their justice into trade. The present bill before you has been considered as enjoying perfection in proportion as it approaches the British system. Sir, I have given you the opinion which I know many sensible Americans entertain of the system of English jurisprudence. With such people, English features will be no recommendation of the bill. Sir, I can not boast a general knowledge of the sentiments of men in the Union. From what I know of my own State, I am confident a great majority abhor chancery. Those whom I have generally heard advocate the chancery were professional men. I really believe that this was the case generally over the Union. I know many people complained of chancery in the

It is a maxim in legislation as well as reason, and applies well in the present case, that it requires the same power to repeal as to enact. The depriving power shoxdd be the same as the appointing power.---The President shall not pardon in cases of impeachment.---The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment, etc. No part of the Constitution is so fully guarded as or more clearly expressed than this part of it. And most justly, too, for every good Government guards the reputation of her citizens as well as their life and property. Every turning out of office is attended with reproach, and the person so turned out is stigmatized with infamy. By means of impeachment a fair hearing and trial are secured to the party. Without this, what man of independent spirit would accept of such an office ? Of what service can his abilities be to the community if afraid of the nod or beck of a superior ?

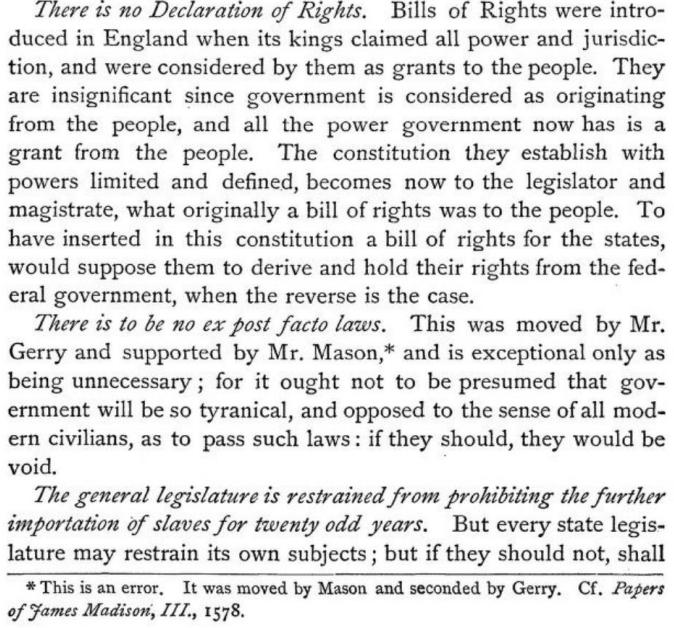
guard against the mistakes of the President in his appointments to office. I do not admit the doctrine of holding commissions 'during pleasure' as constitutional, and shall speak to that point presently. But, supposing for a moment, that to be the case, is not the same guard equally necessary to prevent improper steps in removals as in appointments? Certainly, common inference or induction can mean nothing short of this. It is a maxim in legislation as well as reason, and applies well in the present case, that it requires the same power to repeal as to enact. The depriving power should be the same as the appointing power.

But was this a point left at large by the Constitution? Certainly otherwise. Five or six times in our short Constitution is the trial by impeachment mentioned. In one place, the House of Representatives shall have the sole power of impeachment. In another, the Senate shall have the sole power to try impeachments. In a third, judgment shall not extend further than to removal from office, and disqualification to hold or enjoy offices, etc. The President shall not pardon in cases of impeachment. The President, Vice-President, and *all civil officers* of the United States, shall be removed from office on impeachment, etc. No part of the Constitution is so fully guarded as or more clearly expressed than this part of it. And most justly, too, for every good Government guards the reputation of her citizens as well as their life and property. Every turning out of office is attended with reproach, and the person so turned out is stigmatized with infamy. By means of impeachment a fair hearing and trial are secured to the party. Without this, what man of independent spirit would accept of such an office? Of what service can his abilities be to the community if afraid of the nod or beck of a superior? He must consult his will in every matter. Abject servility is most apt to mark the line of his conduct, and this on the one hand will not fail to be productive of despotism and tyranny on the other; for I consider mankind composed nearly of the same materials in America as in Asia, in the United States as in the East Indies. The Constitution certainly never contemplated any other mode of removing from office. The case is not omitted here; the most ample provision is made. If gentle-

Bull$h!t Bill of Rights

[..There is no Declaration of Rights. Bills of Rights were introduced in England when its kings claimed all power and jurisdiction, and were considered by them as grants to the people. They are insignificant since government is considered as originating from the people, and all the power government now has is a grant from the people. The constitution they establish with powers limited and defined, becomes now to the legislator and magistrate, what originally a bill of rights was to the people. To have inserted in this constitution a bill of rights for the states, would suppose them to derive and hold their rights from the federal government, when the reverse is the case.

There is to be no ex post facto laws. This was moved by Mr. Gerry and supported by Mr. Mason, and is exceptional only as being unnecessary; for it ought not to be presumed that government will be so tyranical, and opposed to the sense of all modern civilians, as to pass such laws: if they should, they would be void.



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The general legislature is restrained from prohibiting the further importation of slaves for twenty odd years. But every state legislature may restrain its own subjects; but if they should not, shall

* This is an error. It was moved by Mason and seconded by Gerry. Cf. *Papers of James Madison, III.*, 1578.

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https://archive.org/details/EssaysOnTheConstitutionOfTheUnitedStates/page/n170/mode/1up

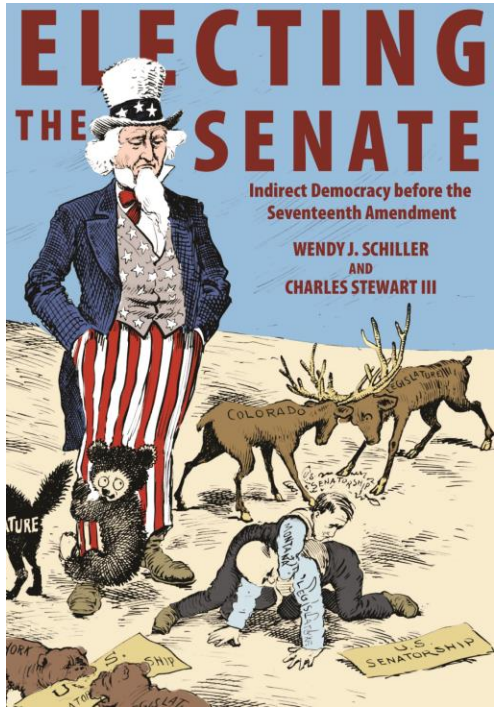
17th Amendment VIOLATES our Republican form of government

From 1789 to 1913, U.S. senators were not directly elected by the people—instead the Constitution mandated that they be chosen by state legislators.

This radically changed in 1913, when the Seventeenth Amendment to the Constitution was ratified, giving the public a direct vote.

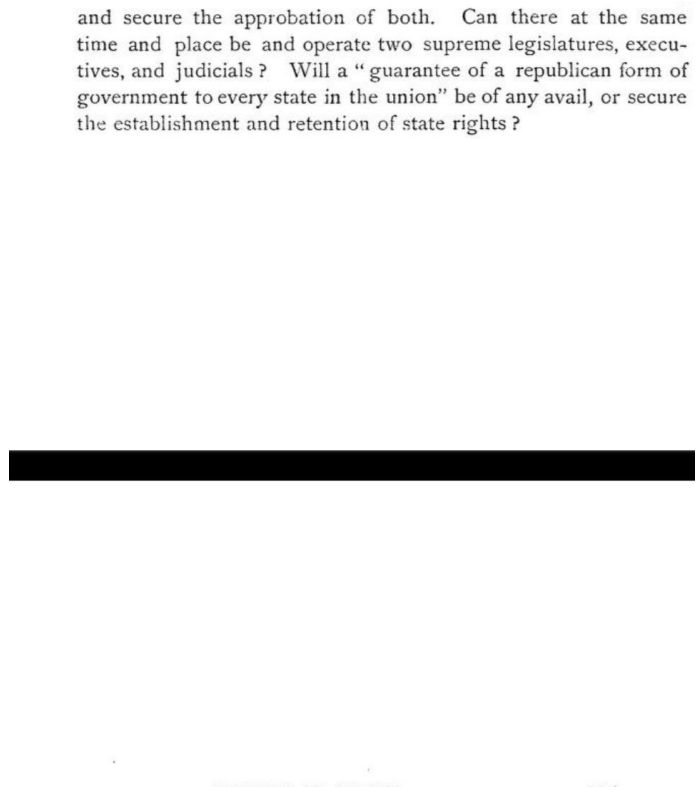
Under Article I, Section 5, clause 2, of the Constitution, a Member of Congress may be removed from office before the normal expiration of his or her constitutional term by an "expulsion" from the Senate (if a Senator) or from the House of Representatives (if a Representative) upon a formal vote on a resolution agreed to by two-thirds of the Members of that body present.

ARTICLES OF CONFEDERATION art. V, § 5 provided states a right to recall delegates from Congress. Now Senators are life-long career politicians, *enrichening* themselves and selling us out...and the people are crying for term-limits??



ISBN:9780691163178

[….Can there at the same time and place be and operate two supreme legislatures, executives, and judicials? Will a " guarantee of a republican form of government to every state in the union" be of any avail, or secure the establishment and retention of state rights? If this guarantee had remained, as it was first reported by the committee of the whole house, to wit,... " that a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States," it would have been substantial; but the changing the word constitution into the word form bears no favorable appearance…..]



and secure the approbation of both. Can there at the same time and place be and operate two supreme legislatures, executives, and judicials? Will a "guarantee of a republican form of government to every state in the union" be of any avail, or secure the establishment and retention of state rights?

LETTERS OF SYDNEY. 305

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Representatives & Assemblies

New Hampshire, 1774. These meetings, usually called by the name of Congresses, though unknown, or disregarded in Britain, were familiar to the people of America; and what could be a more natural or obvious step, in a time of common danger, than to assemble by deputies, and confer on the means of safety? Precedents were numerous, that Governors and delegates had held these Assemblies, when their interests were united.

What then should hinder the people from following the example, when their interest required them to meet, without their Governors, who were endeavoring to maintain a separate interest?

At the meeting of the Assembly of New-Hampshire, in the spring, the House of Representatives, conformably to the proceedings of the Assemblies in the other Colonies, appointed a committee of correspondence.

The Governor, who had in vain labored to prevent this measure, adjourned the Assembly, and after few days, dissolved it; hoping, by this means, to dissolve the committee.

But they were not restricted by forms.

On a summons issued by the committee, the Representative's met again, in their own chamber.

The Governor, attended by the Sheriff of the county, went among them. They rose at his entrance. He declared their meeting illegal, and directed the Sheriff to make open proclamation, or all persons to disperse, and keep the King's peace.

When he had retired they resumed their feats; but, on further consideration, adjourned to another house; and after some conversation, wrote letters to all the towns in the Province; requesting them to send deputies, to hold a Convention at Exeter, who should choose delegates for a general Congress and to pay their respective quotas of two hundred pounds, agreeably to the last proportion of the Provincial tax.

They also recommended a day of fasting and prayer, to be observed by the several congregations, on account of the gloomy appearance of public affairs. The day was observed, with religious solemnity. The money was collected. Eighty-five deputies were chosen and met at Exeter, where they delegated Nathaniel Folsom and John Sully Esquires, to attend the proposed Congress, at Philadelphia, in September, and delivered to them the money which had been collected, to defray their expenses. They also recommended the distressed state of Boston, to the commiseration of their brethren in New-Hampshire; and contributions were raised in many of the towns for their relief.

The Governor was now convinced, and in his letters to the ministry acknowledged, that the union of the Colonies would not be lost in New-Hampshire. At the same time, he did the people the justice to say, that they had abstained from violence and outrage, and that the laws had their course. In his letters which were published by the ministry, there appears a spirit of candor toward the people, as well as a desire to recommend himself to the approbation of his superiors.

Though he saw another authority rising in the Province, founded on the broad basis of public opinion, and unrestrained representation, an authority over which he had no influence or control; yet he endeavored to preserve the shadow of the royal government, and keep up its forms as long as possible.

But it was impracticable for a person, circumstanced as he was, to withstand the spirit of the people.

https://archive.org/details/historyofnewhamp0000belk

Here's a simplified breakdown of what happened in New Hampshire in 1774:

The Problem:

- The British government and the American colonists were in conflict.
- The colonists felt their rights were being violated.

The Solution: Meetings:

- The colonists were used to holding meetings (Congresses) to discuss important issues.
- They decided to hold a meeting without the royal governor's permission to address the growing crisis.

New Hampshire's Actions:

- The New Hampshire House of Representatives formed a "committee of correspondence" to communicate with other colonies.
- The royal governor tried to stop them by dissolving the assembly.
- The committee ignored him and called for a larger meeting (Convention) in Exeter.
- This convention:
  - Chose delegates (representatives) to attend the Continental Congress in Philadelphia.
  - Raised money to pay for the delegates' travel.
  - Organized a day of fasting and prayer.
  - Collected money to send aid to Boston, which was under British control.

The Governor's Response:

- The governor recognized that the colonists were uniting and that he was losing control.
- He admitted that the colonists were acting peacefully, even though they were defying his authority.
- He understood that the people were now following the lead of the convention, and not the royal government.
- He continued to try to maintain the appearance of royal control, but it was becoming impossible.

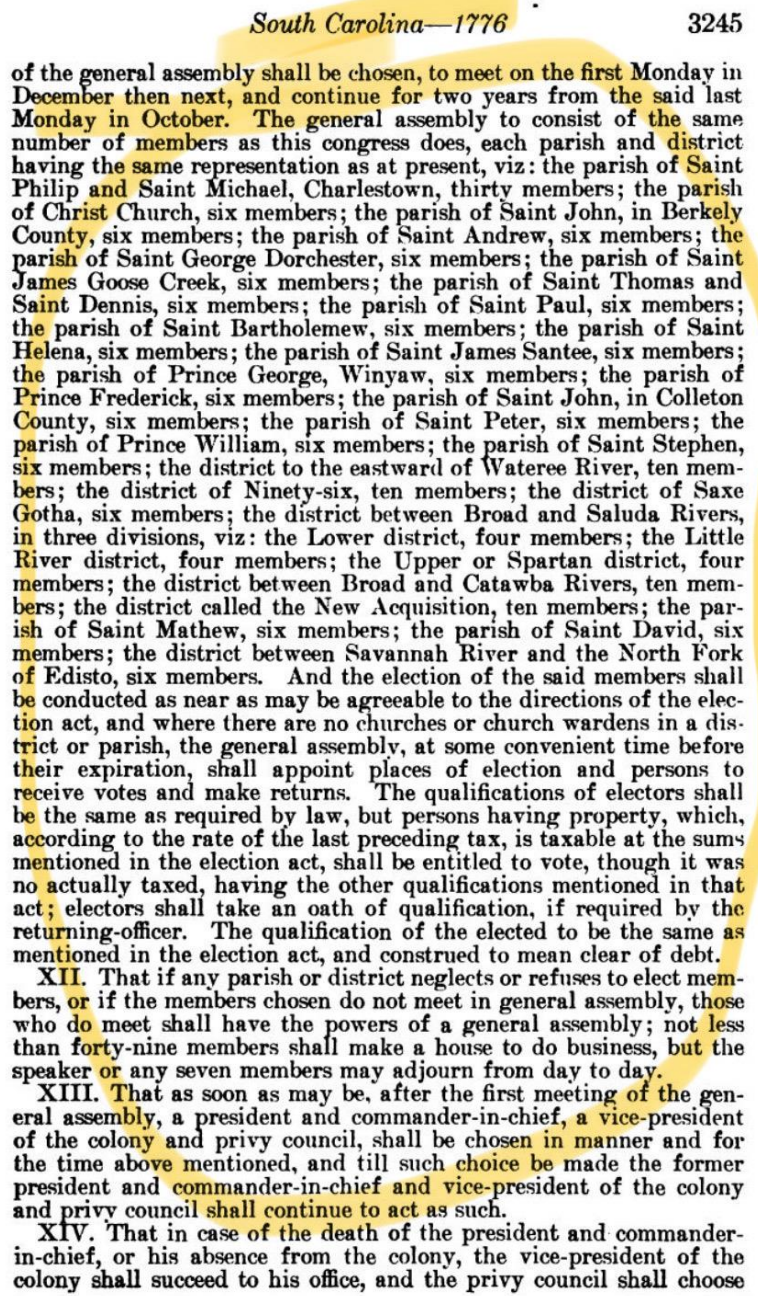
In essence:

The people of New Hampshire took control of their own affairs.
They organized themselves to respond to the crisis with Britain.
They did so without violence, but with firm resolve.
They joined the other colonies in creating their own form of government.

https://archive.org/details/historyofnewhamp0000belk

South Carolina—1776

[...of the general assembly shall be chosen, to meet on the first Monday in December then next, and continue for two years from the said last monday in October. The general assembly to consist of the same number of members as this congress does, each parish and district having the same representatives as at present, viz ; the parish of Saint Philip and Saint Michael, Charlestown, thirty members; the parish of Christ Church, six members; the parish of Saint John, in Berkely County, six members; the parish of Saint Andrew, six members...] [ETC.ETC.]

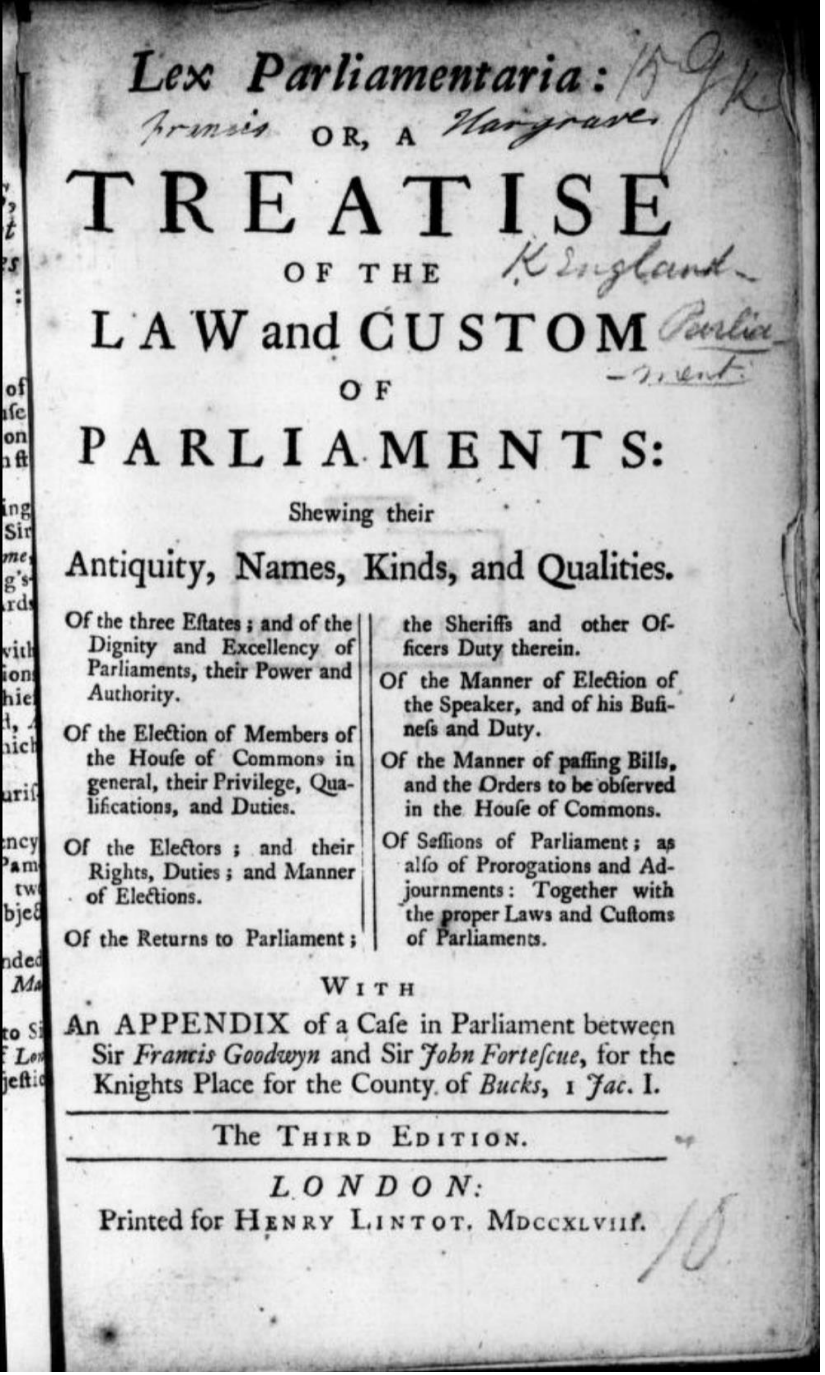


of the general assembly shall be chosen, to meet on the first Monday in December then next, and continue for two years from the said last Monday in October. The general assembly to consist of the same number of members as this congress does, each parish and district having the same representation as at present, viz: the parish of Saint Philip and Saint Michael, Charlestown, thirty members; the parish of Christ Church, six members; the parish of Saint John, in Berkely County, six members; the parish of Saint Andrew, six members; the parish of Saint George Dorchester, six members; the parish of Saint James Goose Creek, six members; the parish of Saint Thomas and Saint Dennis, six members; the parish of Saint Paul, six members; the parish of Saint Bartholemew, six members; the parish of Saint Helena, six members; the parish of Saint James Santee, six members; the parish of Prince George, Winyaw, six members; the parish of Prince Frederick, six members; the parish of Saint John, in Colleton County, six members; the parish of Saint Peter, six members; the parish of Prince William, six members; the parish of Saint Stephen, six members; the district to the eastward of Wateree River, ten members; the district of Ninety-six, ten members; the district of Saxe Gotha, six members; the district between Broad and Saluda Rivers, in three divisions, viz: the Lower district, four members; the Little River district, four members; the Upper or Spartan district, four members; the district between Broad and Catawba Rivers, ten members; the district called the New Acquisition, ten members; the parish of Saint Mathew, six members; the parish of Saint David, six members; the district between Savannah River and the North Fork of Edisto, six members. And the election of the said members shall be conducted as near as may be agreeable to the directions of the election act, and where there are no churches or church wardens in a district or parish, the general assembly, at some convenient time before their expiration, shall appoint places of election and persons to receive votes and make returns. The qualifications of electors shall be the same as required by law, but persons having property, which, according to the rate of the last preceding tax, is taxable at the sums mentioned in the election act, shall be entitled to vote, though it was no actually taxed, having the other qualifications mentioned in that act; electors shall take an oath of qualification, if required by the returning-officer. The qualification of the elected to be the same as mentioned in the election act, and construed to mean clear of debt.

XII. That if any parish or district neglects or refuses to elect members, or if the members chosen do not meet in general assembly, those who do meet shall have the powers of a general assembly; not less than forty-nine members shall make a house to do business, but the speaker or any seven members may adjourn from day to day.

XIII. That as soon as may be, after the first meeting of the general assembly, a president and commander-in-chief, a vice-president of the colony and privy council, shall be chosen in manner and for the time above mentioned, and till such choice be made the former president and commander-in-chief and vice-president of the colony and privy council shall continue to act as such.

XIV. That in case of the death of the president and commander-in-chief, or his absence from the colony, the vice-president of the colony shall succeed to his office, and the privy council shall choose



Lex Parliamentaria:

OR, A

TREATISE

OF THE

LAW and CUSTOM

OF

PARLIAMENTS:

Shewing their

Antiquity, Names, Kinds, and Qualities.

Of the three Eſtates; and of the Dignity and Excellency of Parliaments, their Power and Authority.

Of the Election of Members of the Houſe of Commons in general, their Privilege, Qualifications, and Duties.

Of the Electors; and their Rights, Duties; and Manner of Elections.

Of the Returns to Parliament; the Sheriffs and other Officers Duty therein.

Of the Manner of Election of the Speaker, and of his Buſineſs and Duty.

Of the Manner of paſſing Bills, and the Orders to be obſerved in the Houſe of Commons.

Of Seſſions of Parliament; as alſo of Prorogations and Adjournments: Together with the proper Laws and Cuſtoms of Parliaments.

WITH

An APPENDIX of a Caſe in Parliament between Sir *Francis Goodwyn* and Sir *John Forteſcue*, for the Knights Place for the County of *Bucks*, 1 *Jac.* I.

The THIRD EDITION.

LONDON:

Printed for HENRY LINTOT. MDCCXLVIII.

uſual for the Prince, on his Acceſſion to the Throne, to grant Charters to antient Demeſne Vills, and other popular Towns, thereby erecting 'em into *free Burros*, and this conſequently gave 'em a Right to be repreſented in Parliament. And by this Artifice, among others, the Crown advanced its Intereſts in the Houſe of Commons.

For it muſt be confeſs'd, That by the antient Conſtitution, there were no Repreſentatives of the Commons as Commons in Parliament, beſides the Knights for the Shires, the Barons for the Cinque Ports, the Citizens for the Cities, and the Burgeſſes for the ancient Burros only; and that the Elections for all thoſe, were to be made by ſuch Perſons only, as were poſſeſs'd of Lands or Tenements, held by them as *Freeholds*, or *free Burgage Tenures*; which conſequently excluded all Villeins and Copyholders, as alſo Tenants in *antient Demeſne* (which were but the *King's Villeins*) and the Tenants and Dependants of

Crompt. of Courts, f. 2. 3, &c. Stat. 23. H. 6. c. 11. Stat. 12. R. 2. c. 12. Crom. 2. 3. 4. 5. Bro. *Ant. Dem.* 433

B 3

For it must be confess'd, That by the antient Constitution, there were no Representatives of the Commons as Commons in Par1ament, besides the Knights for the Shires, of the Barons for the Cinque Ports, the Citizens for the Cities, and the Burgesses for the ancient Burros only; and that the Elections for all those, were to be made by such Persons only, as were possesed of Lands or Tenements, held by them as Freeholds, or free Burgage Tenures...]

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[...that our loving Subjects should be informed...][...[For the security of the Liberties and properties of those who are and shall be inhabitants thereof...][...Proclamaion of the King of Great Britain, this October 1763. promising a legislative assembly as soon as the state and circumstances of the governnnents will admit; and that in the mean time while persons inhabiting or resorting, may confide in the royal protection for the enjoyment of the benefit of the laws of England; for the administration which courts of justice ordered to be erected...][...they shall, with the advice and consent of the members of our council, summon and call general assemblies, within the said government respectively, in such manner and form as is used and directed in those colonies and provinces IN AMERICA which are under our immediate government...]

[for the hearing and determining all causes as well criminal as civil according to the laws and equity, and as near as may be agreeable

right to claim. It is the treating of a person according to justice and reason.

The Lord shall judge the people with *equity*. Ps. xcviii.

With righteousness shall he judge the poor, and reprove with *equity*. Is. xi.

2. Justice; impartiality; a just regard to right or claim; as, we must, in *equity*, allow this claim.

3. In *law*, an equitable claim. "I consider the wife's *equity* to be too well settled to be shaken." *Kent.*

4. In *jurisprudence*, the correction or qualification of law, when too severe or defective; or the extension of the words of the law to cases not expressed, yet coming within the reason of the law. Hence a court of equity or chancery, is a court which corrects the operation of the literal text of the law, and supplies its defects, by reasonable construction, and by rules of proceeding and deciding, which are not admissible in a court of law. Equity then is the law of reason, exercised by the chancellor or judge, giving remedy in cases to which the courts of law are not compe-

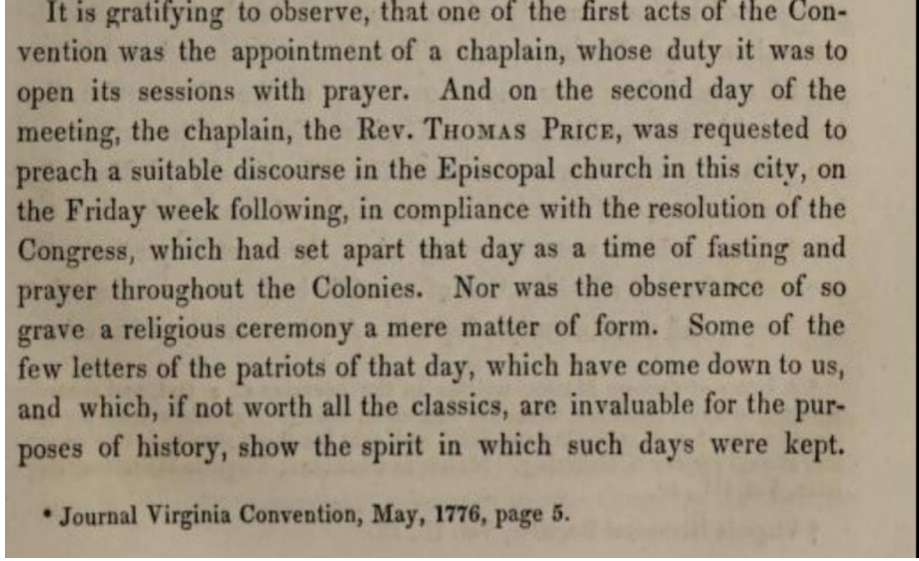
And the jurors aforesaid upon their oaths aforesaid further say, that his Majesty, by his royal proclamation bearing date at Westminster the 7th day of October, 1703, amongst other things declared as follows, "And whereas it will greatly "contribute to the speedy settling our said new government, "that our loving subjects should be informed of our pater- "nal care for the security of the liberties and properties of "those who are and shall become inhabitants thereof; we "have thought fit to publish and declare, by this our pro- "clamation, that we have, in the letters patent under our "great seal of Great Britain, by which the said governments "are constituted, given express power and direction to our "governors of our said colonies respectively, that, so soon as "the state and circumstances of the said colonies, will admit "therof, they shall, with the advice and consent of the mem- "bers of our council, summon and call general assemblies with- "in the said government respectively, in such manner and "form as is used and directed in those colonies and provinces "in America, which are under our immediate government. "—And we have also given power to the said governors, "with the consent of our said councils and the representa- "tives of the people, so to be summoned as aforesaid, to "make constitutions and ordain laws, statutes and ordi- "nances, for the public welfare and good government of "our said colonies and of the people and inhabitants "thereof, as near as may be, agreeable to the laws of En- "gland and under such regulations and restrictions as are "used in other countries. And in the mean time and un- "til such Assemblies can be called as aforesaid, all persons "inhabiting in, or resorting to our said colonies, may con- "fide in our royal protection for the enjoyment of the be- "nefit of the laws of our realm of England: for which "purpose we have given power under our great seal to the go- "vernors of our said colonies respectively to erect and con- "stitute, with the advice of our said councils respectively "courts of judicature and public justice within our said colo- "nies, for the hearing and determining all causes as well "criminal as civil according to law and equity, and as near "as may be agreeable to the laws of England; with liberty "to all persons who may think themselves aggrieved by the "sentences of such courts in all civil causes to appeal, un- "der

Proclamation of the King of Great Britain, 7th of October 1763, promising a legislative assembly as soon as the state and circumstances of the new governments will admit; and that in the mean while persons inhabiting or resorting may confide in the royal protection for the enjoyment of the benefit of the laws of England; for the administration of which courts of justice ordered to be erected.

[661]

Articles of Confederation or Constitution

[…It is gratifying to observe, that one of the first acts of the Convention was the appointment of a chaplain, whose duty it was to open its sessions with prayer. And on the second day of the meeting, the chaplain, the Rev. Thomas Price, was requested to preach a suitable discourse in the Episcopal church in this city, on the Friday week following, in compliance with the resolution of the Congress, which had set apart that day as a time of fasting and prayer throughout the Colonies. Nor was the observance of so grave a religious ceremony a mere matter of form. Some of the few letters of the patriots of that day, which have come down to us, and which, if not worth all the classics, are invaluable for the purposes of history, show the spirit in which such days were kept.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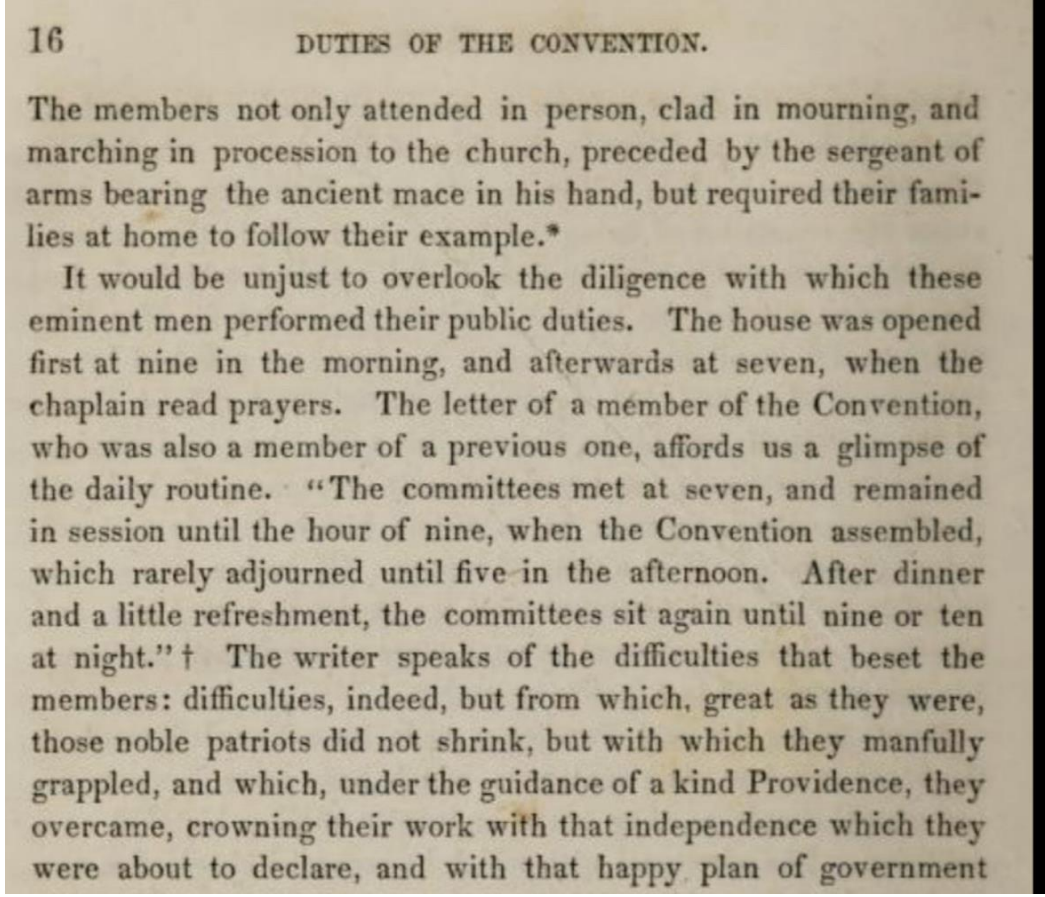
* Journal Virginia Convention, May, 1776, page 5.

https://archive.org/details/manversusstate00spen_0

[…The committees met at seven, and remained in session until the hour of nine, when the Convention assembled, which rarely adjourned until five in the afternoon. After dinner and a little refreshment, the committees sit again until nine or ten at night." The writer speaks of the difficulties that beset the members: difficulties, indeed, but from which, great as they were, those noble patriots did not shrink, but with which they manfully grappled, and which, under the guidance of a kind Providence, they overcame, crowning their work with that independence which they were about to declare, and with that happy plan of government



16 DUTIES OF THE CONVENTION.

The members not only attended in person, clad in mourning, and marching in procession to the church, preceded by the sergeant of arms bearing the ancient mace in his hand, but required their families at home to follow their example.*

It would be unjust to overlook the diligence with which these eminent men performed their public duties. The house was opened first at nine in the morning, and afterwards at seven, when the chaplain read prayers. The letter of a member of the Convention, who was also a member of a previous one, affords us a glimpse of the daily routine. "The committees met at seven, and remained in session until the hour of nine, when the Convention assembled, which rarely adjourned until five in the afternoon. After dinner and a little refreshment, the committees sit again until nine or ten at night." † The writer speaks of the difficulties that beset the members: difficulties, indeed, but from which, great as they were, those noble patriots did not shrink, but with which they manfully grappled, and which, under the guidance of a kind Providence, they overcame, crowning their work with that independence which they were about to declare, and with that happy plan of government

RANDOLPH'S DRAFT OF A CONSTITUTION.

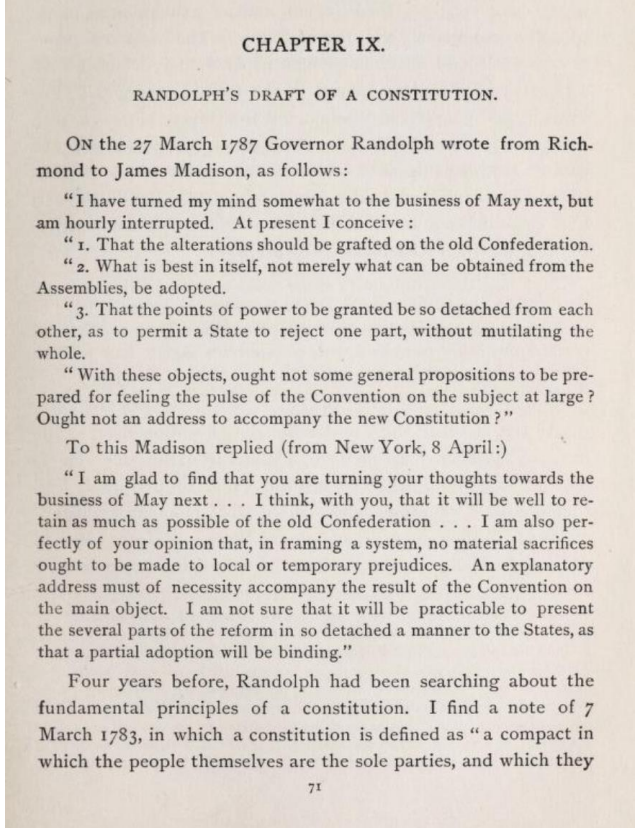
27 March 1787 Randolph to Madison,

“ I have turned my mind somewhat to the business of May next, but am hourly interrupted. At present I conceive :“

1. That the alterations should be grafted on the old Confederation.“

2. What is best in itself, not merely what can be obtained from the Assemblies, be adopted.“

3. That the points of power to be granted be so detached from each other, as to permit a State to reject one part, without mutilating the whole.“ With these objects, ought not some general propositions to be prepared for feeling the pulse of the Convention on the subject at large?
Ought not an address to accompany the new Constitution ? ”



CHAPTER IX.

RANDOLPH'S DRAFT OF A CONSTITUTION.

On the 27 March 1787 Governor Randolph wrote from Richmond to James Madison, as follows:

"I have turned my mind somewhat to the business of May next, but am hourly interrupted. At present I conceive:

"1. That the alterations should be grafted on the old Confederation.

"2. What is best in itself, not merely what can be obtained from the Assemblies, be adopted.

"3. That the points of power to be granted be so detached from each other, as to permit a State to reject one part, without mutilating the whole.

"With these objects, ought not some general propositions to be prepared for feeling the pulse of the Convention on the subject at large? Ought not an address to accompany the new Constitution?"

To this Madison replied (from New York, 8 April:)

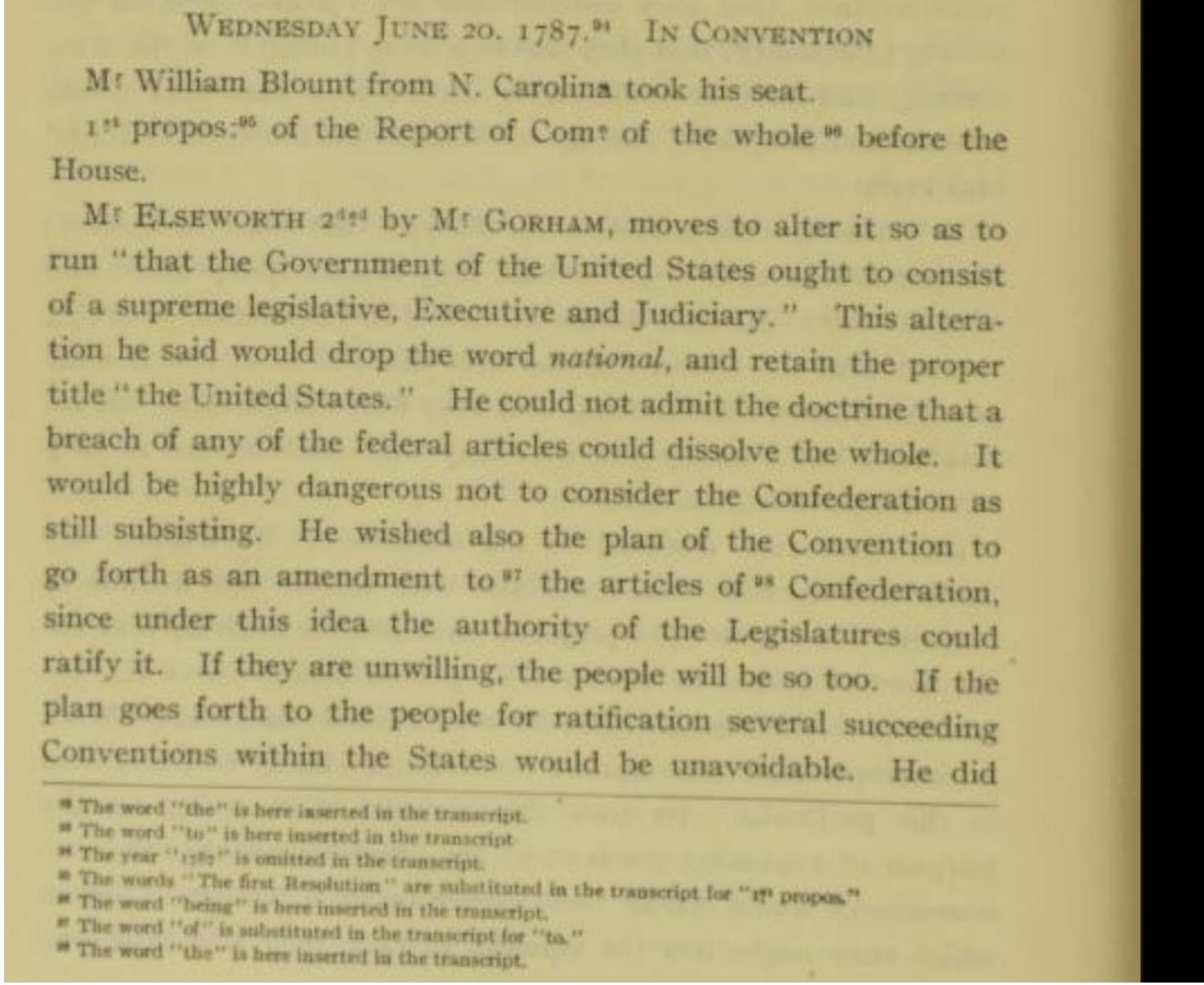
"I am glad to find that you are turning your thoughts towards the business of May next . . . I think, with you, that it will be well to retain as much as possible of the old Confederation . . . I am also perfectly of your opinion that, in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States, as that a partial adoption will be binding."

Four years before, Randolph had been searching about the fundamental principles of a constitution. I find a note of 7 March 1783, in which a constitution is defined as "a compact in which the people themselves are the sole parties, and which they

71

https://archive.org/details/omittedchapterso00conw/page/71/mode/1up?q=Addition

[Elseworth] …He wished also the plan of the Convention to go forth as an amendment to the articles of ° Confederation, since under this idea the authority of the Legislatures could ratify it.



WEDNESDAY JUNE 20. 1787.[94] IN CONVENTION

Mr William Blount from N. Carolina took his seat.

1st propos:[95] of the Report of Comt of the whole[96] before the House.

Mr ELSEWORTH 2ded by Mr GORHAM, moves to alter it so as to run "that the Government of the United States ought to consist of a supreme legislative, Executive and Judiciary." This alteration he said would drop the word *national*, and retain the proper title "the United States." He could not admit the doctrine that a breach of any of the federal articles could dissolve the whole. It would be highly dangerous not to consider the Confederation as still subsisting. He wished also the plan of the Convention to go forth as an amendment to[97] the articles of[98] Confederation, since under this idea the authority of the Legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification several succeeding Conventions within the States would be unavoidable. He did

[96] The word "the" is here inserted in the transcript.
[97] The word "to" is here inserted in the transcript.
[94] The year "1787" is omitted in the transcript.
[95] The words "The first Resolution" are substituted in the transcript for "1st propos."
[96] The word "being" is here inserted in the transcript.
[97] The word "of" is substituted in the transcript for "to."
[98] The word "the" is here inserted in the transcript.

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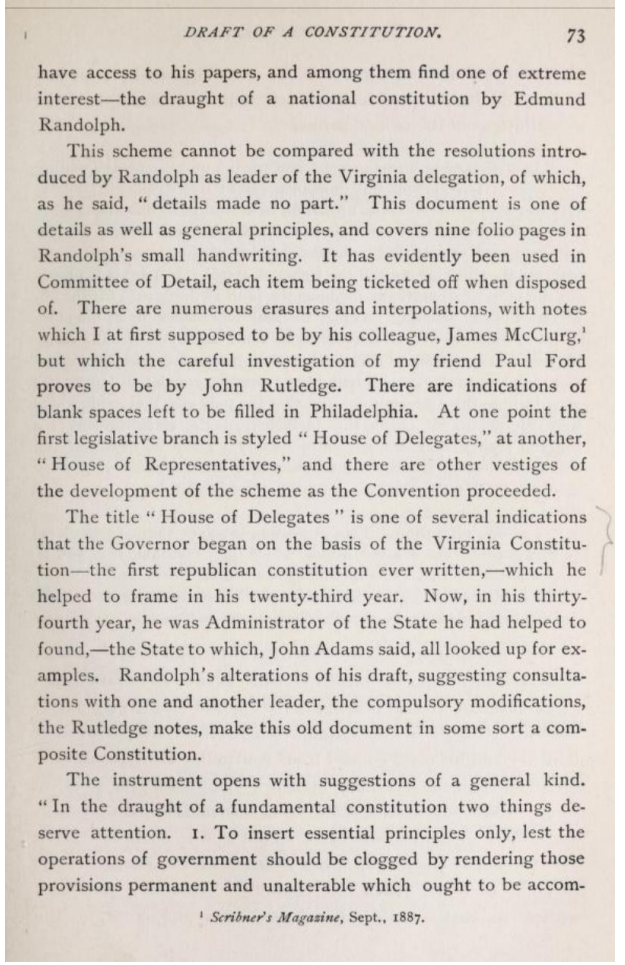
Four years before, Randolph had been searching about the fundamental principles of a constitution. I find a note of 7 March 1783, in which a constitution is defined as "a compact in which the people themselves are the sole parties, and which they alone can abrogate ; delineating the degree to which they have parted with legislative, executive, and judiciary power, as well as prescribing how far each of the simple forms of government is to be pursued in acts of legislation



DRAFT OF A CONSTITUTION. 73

have access to his papers, and among them find one of extreme interest—the draught of a national constitution by Edmund Randolph.

This scheme cannot be compared with the resolutions introduced by Randolph as leader of the Virginia delegation, of which, as he said, "details made no part." This document is one of details as well as general principles, and covers nine folio pages in Randolph's small handwriting. It has evidently been used in Committee of Detail, each item being ticketed off when disposed of. There are numerous erasures and interpolations, with notes which I at first supposed to be by his colleague, James McClurg,[1] but which the careful investigation of my friend Paul Ford proves to be by John Rutledge. There are indications of blank spaces left to be filled in Philadelphia. At one point the first legislative branch is styled "House of Delegates," at another, "House of Representatives," and there are other vestiges of the development of the scheme as the Convention proceeded.

The title "House of Delegates" is one of several indications that the Governor began on the basis of the Virginia Constitution—the first republican constitution ever written,—which he helped to frame in his twenty-third year. Now, in his thirty-fourth year, he was Administrator of the State he had helped to found,—the State to which, John Adams said, all looked up for examples. Randolph's alterations of his draft, suggesting consultations with one and another leader, the compulsory modifications, the Rutledge notes, make this old document in some sort a composite Constitution.

The instrument opens with suggestions of a general kind. "In the draught of a fundamental constitution two things deserve attention. 1. To insert essential principles only, lest the operations of government should be clogged by rendering those provisions permanent and unalterable which ought to be accom-

[1] *Scribner's Magazine*, Sept., 1887.

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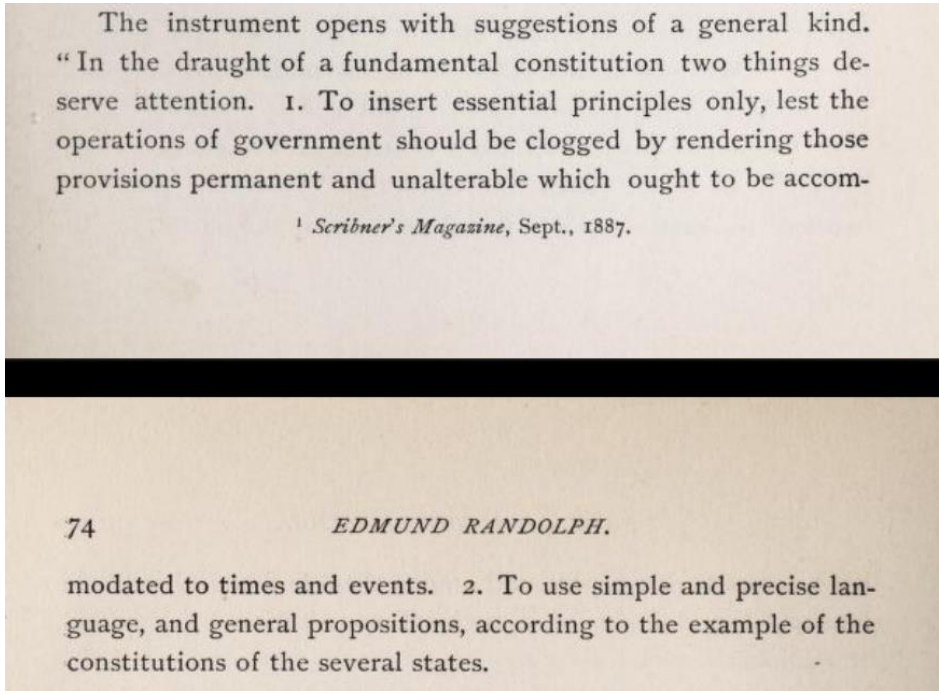
“ In the draught of a fundamental constitution two things deserve attention, i. To insert essential principles only, lest the operations of government should be clogged by rendering those provisions permanent and unalterable which ought to be accommodated to times and events. 2. To use simple and precise language, and general propositions, according to the example of the constitutions of the several states…”



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74 EDMUND RANDOLPH.

modated to times and events. 2. To use simple and precise language, and general propositions, according to the example of the constitutions of the several states.

Keep it basic and flexible:

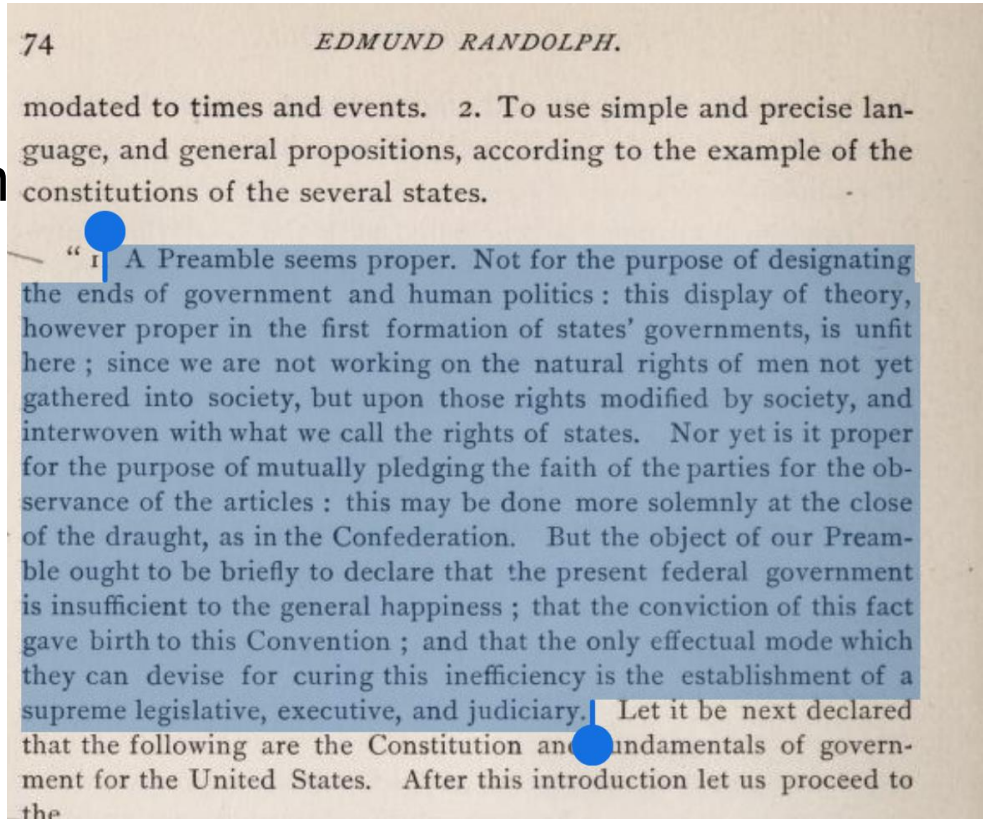
- Only put the most important, core ideas into the constitution.
- Don't try to write rules for every little thing, because times change, and the government needs to be able to adapt.
- If you try to make everything permanent, you'll end up with a government that can't respond to new situations.

Use clear, simple language:

- Write in a way that everyone can understand.
- Focus on general ideas, not specific details, just like the state constitutions do.

A Preamble seems proper. Not for the purpose of designating the ends of government and human politics: this display of theory, however proper in the first formation of states' governments, is unfit here;

since we are not working on the natural rights of men not yet gathered into society, but upon those rights modified by society, and interwoven with what we call the rights of states. [POLITICAL RIGHTS]
Nor yet is it proper for the purpose of mutually pledging the faith of the parties for the observance of the articles: this may be done more solemnly at the close of the draught, as in the Confederation. [OATH OF OFFICE]


74 EDMUND RANDOLPH.

modated to times and events. 2. To use simple and precise language, and general propositions, according to the example of the constitutions of the several states.

"1 A Preamble seems proper. Not for the purpose of designating the ends of government and human politics: this display of theory, however proper in the first formation of states' governments, is unfit here; since we are not working on the natural rights of men not yet gathered into society, but upon those rights modified by society, and interwoven with what we call the rights of states. Nor yet is it proper for the purpose of mutually pledging the faith of the parties for the observance of the articles: this may be done more solemnly at the close of the draught, as in the Confederation. But the object of our Preamble ought to be briefly to declare that the present federal government is insufficient to the general happiness; that the conviction of this fact gave birth to this Convention; and that the only effectual mode which they can devise for curing this inefficiency is the establishment of a supreme legislative, executive, and judiciary. Let it be next declared that the following are the Constitution and fundamentals of government for the United States. After this introduction let us proceed to the

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[June 14, 1789]
[…My mind revolts, in many instances, against the Constitution of the United States. Indeed, I am afraid it will turn out the vilest ' of all traps that, ever was set to ensnare the freedom of an unsuspecting people. Treaties formed by the Executive of the United States are to be the law of the land. To cloak the Executive with legislative authority is setting aside our modern and much-boasted distribution of power into legislative, judicial, and executive — discoveries unknown to Locke and Montesquieu, and all the ancient writers. It certainly contradicts all the modern theory of government, and in, practice must be tyranny.

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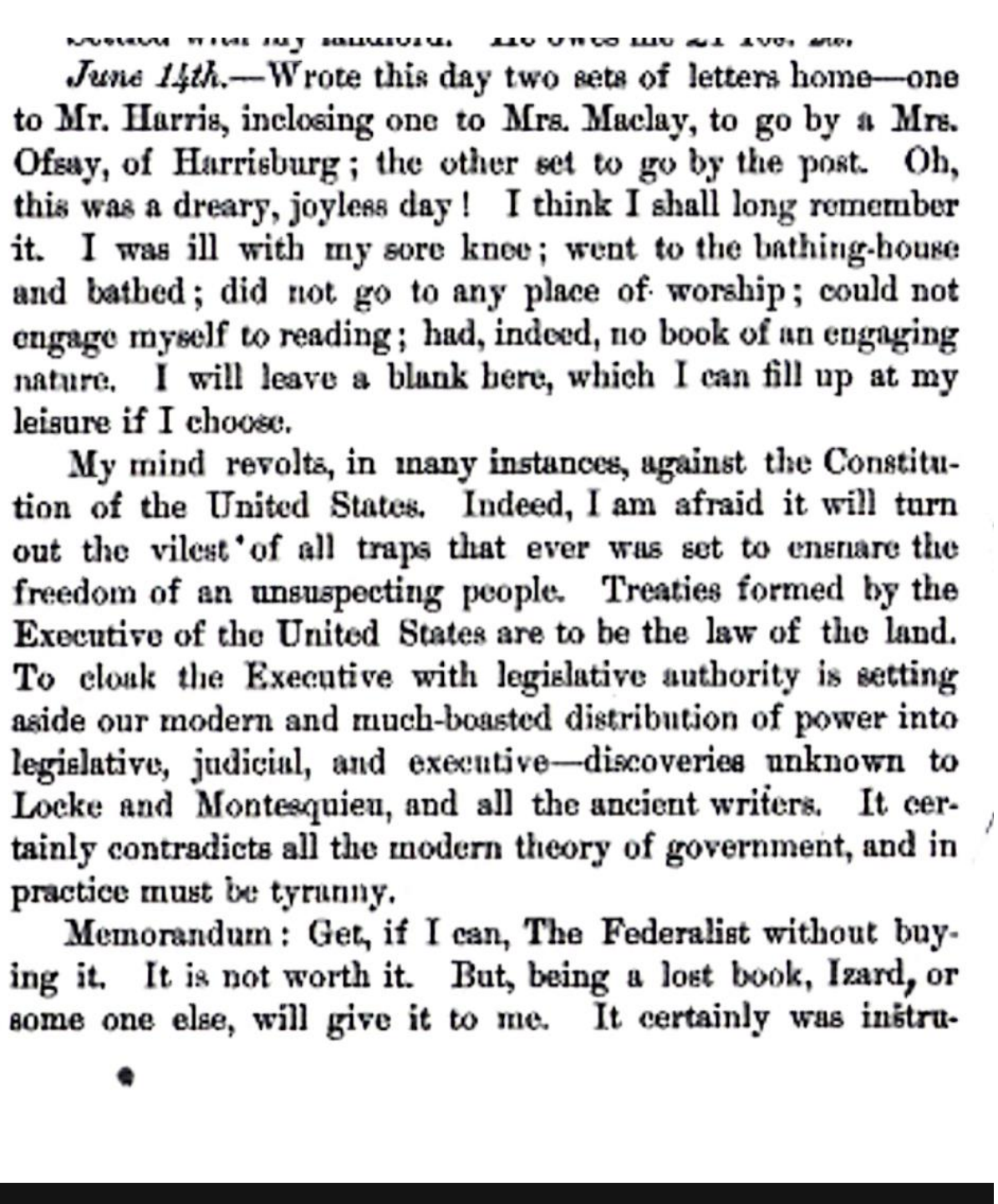


June 14th.—Wrote this day two sets of letters home—one to Mr. Harris, inclosing one to Mrs. Maclay, to go by a Mrs. Ofsay, of Harrisburg; the other set to go by the post. Oh, this was a dreary, joyless day! I think I shall long remember it. I was ill with my sore knee; went to the bathing-house and bathed; did not go to any place of worship; could not engage myself to reading; had, indeed, no book of an engaging nature. I will leave a blank here, which I can fill up at my leisure if I choose.

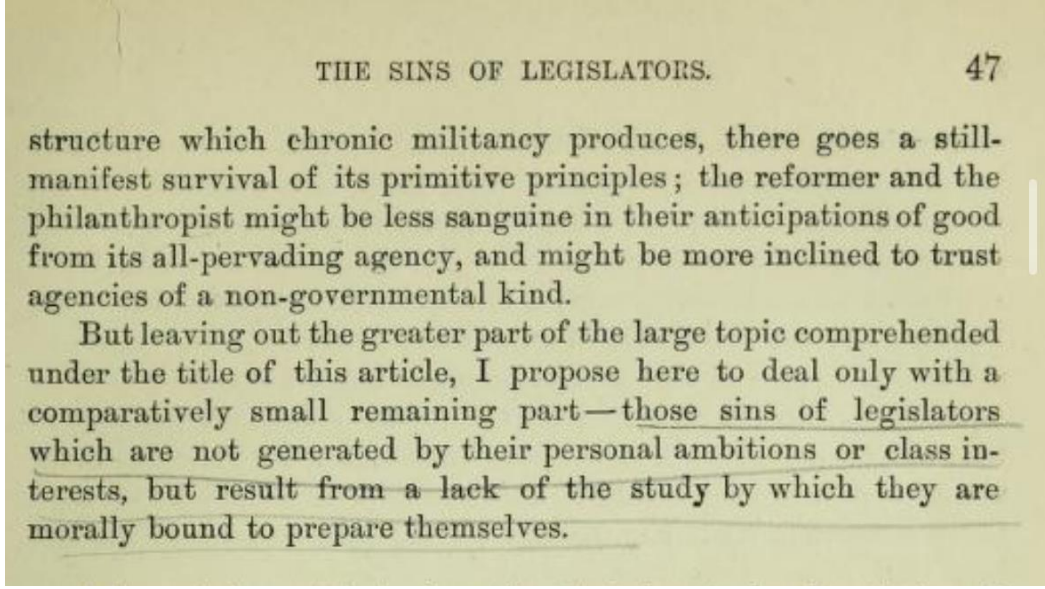
My mind revolts, in many instances, against the Constitution of the United States. Indeed, I am afraid it will turn out the vilest of all traps that ever was set to ensnare the freedom of an unsuspecting people. Treaties formed by the Executive of the United States are to be the law of the land. To cloak the Executive with legislative authority is setting aside our modern and much-boasted distribution of power into legislative, judicial, and executive—discoveries unknown to Locke and Montesquieu, and all the ancient writers. It certainly contradicts all the modern theory of government, and in practice must be tyranny.

Memorandum: Get, if I can, The Federalist without buying it. It is not worth it. But, being a lost book, Izard, or some one else, will give it to me. It certainly was instru-

Petitions

Sins of the legislators

[….But leaving out the greater part of the large topic comprehended under the title of this article, I propose here to deal only with a comparatively small remaining part-those sins of legislators which are not generated by their personal ambitions or class interests, but result from a lack of the study by which they are morally bound to prepare themselves.



THE SINS OF LEGISLATORS. 47

structure which chronic militancy produces, there goes a still-manifest survival of its primitive principles; the reformer and the philanthropist might be less sanguine in their anticipations of good from its all-pervading agency, and might be more inclined to trust agencies of a non-governmental kind.

But leaving out the greater part of the large topic comprehended under the title of this article, I propose here to deal only with a comparatively small remaining part—those sins of legislators which are not generated by their personal ambitions or class interests, but result from a lack of the study by which they are morally bound to prepare themselves.

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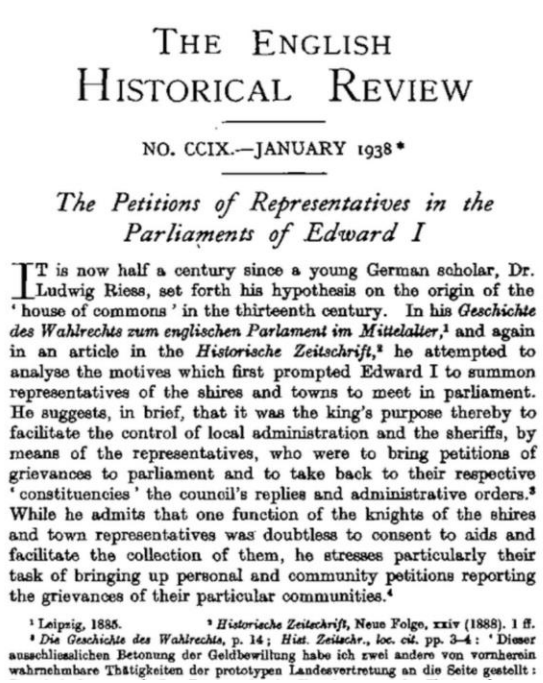
[..Ludwig Reiss...][... attempted to analyse the motives which first prompted Edward I to summon representatives of the shires and towns to meet in parliament.
He suggests, in brief, that it was the king's purpose thereby to facilitate the control of local administration and the sheriffs, by means of the representatives, who were to bring petitions of grievances to parliament and to take back to their respective 'constituencies' the council's replies and administrative orders. While he admits that one function of the knights of the shires and town representatives was doubtless to consent to aids and facilitate the collection of them, he stresses particularly their task of bringing up personal and community petitions reporting the grievances of their particular communities...]



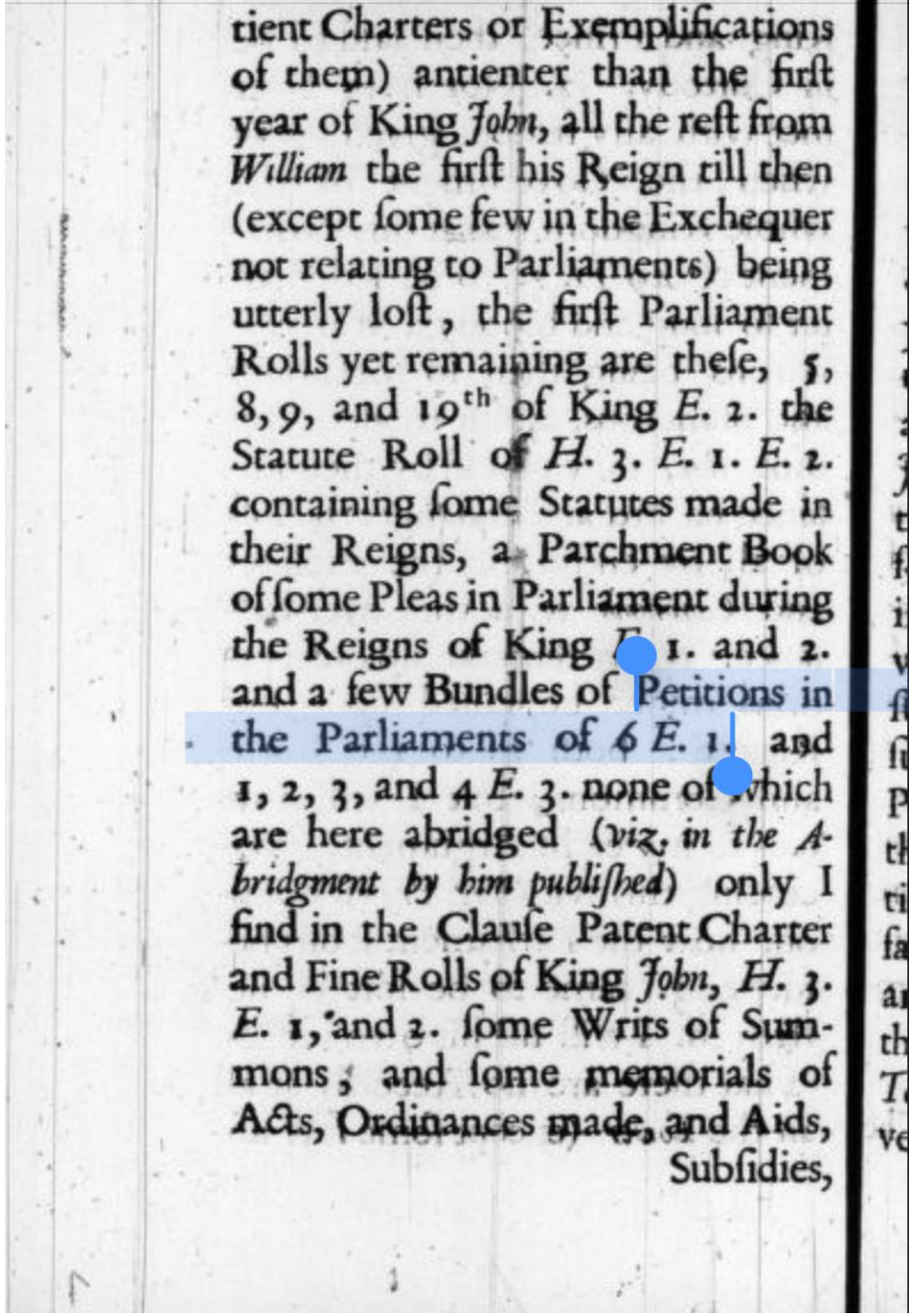
THE ENGLISH HISTORICAL REVIEW

NO. CCIX.—JANUARY 1938

The Petitions of Representatives in the Parliaments of Edward I

IT is now half a century since a young German scholar, Dr. Ludwig Riess, set forth his hypothesis on the origin of the 'house of commons' in the thirteenth century. In his *Geschichte des Wahlrechts zum englischen Parlament im Mittelalter*,[1] and again in an article in the *Historische Zeitschrift*,[2] he attempted to analyse the motives which first prompted Edward I to summon representatives of the shires and towns to meet in parliament. He suggests, in brief, that it was the king's purpose thereby to facilitate the control of local administration and the sheriffs, by means of the representatives, who were to bring petitions of grievances to parliament and to take back to their respective 'constituencies' the council's replies and administrative orders.[3] While he admits that one function of the knights of the shires and town representatives was doubtless to consent to aids and facilitate the collection of them, he stresses particularly their task of bringing up personal and community petitions reporting the grievances of their particular communities.[4]

[1] Leipzig, 1885. [2] *Historische Zeitschrift*, Neue Folge, xxiv (1888). 1 ff.
[3] *Die Geschichte des Wahlrechts*, p. 14; *Hist. Zeitschr., loc. cit.* pp. 3–4: 'Dieser ausschliesslichen Betonung der Geldbewilligung habe ich zwei andere von vornherein wahrnehmbare Thätigkeiten der prototypen Landesvertretung an die Seite gestellt:



tient Charters or Exemplifications of them) antienter than the firſt year of King *John*, all the reſt from *William* the firſt his Reign till then (except ſome few in the Exchequer not relating to Parliaments) being utterly loſt, the firſt Parliament Rolls yet remaining are theſe, 5, 8, 9, and 19th of King *E.* 2. the Statute Roll of *H.* 3. *E.* 1. *E.* 2. containing ſome Statutes made in their Reigns, a Parchment Book of ſome Pleas in Parliament during the Reigns of King *E.* 1. and 2. and a few Bundles of Petitions in the Parliaments of 6 *E.* 1. and 1, 2, 3, and 4 *E.* 3. none of which are here abridged (*viz. in the Abridgment by him publiſhed*) only I find in the Clauſe Patent Charter and Fine Rolls of King *John*, *H.* 3. *E.* 1, and 2. ſome Writs of Summons, and ſome memorials of Acts, Ordinances made, and Aids, Subſidies,

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Early American Petition
September 20-26, 1693.
Maryland Assembly Proceedings

To the Hon'ble the house of Assembly now Sitting.
The humble petition of Garret V: sweringen Sheweth
That your Pet' has engaged himselfe for Diverse Sumes of Money & past Bills of Exchange for Liquors & provisions for he had so done he could nos beefere to Accomodate yous hono' at this present, & Notwithstanding all, was forct to give great rates, as is very well knowne, almost double what they were a yeare agoe.
And now your pet' must sell for tobacco w'ch yr Honor well knowes the vallue off; soe that if rates be not altered from what they were last Sett, your Pet' will absolutely be a great looser, & never be able to discharge himselfe from his Money Obligacions he has run himselfe into, to Serve the Countrey as aforesaid.
Y' pet' therefore humbly prayes that your honors would take his present Condicion into your serious Consideracon and that you would be pleased to Sett the rates that there be noe future trouble about altering accompts but that your pet' may send them in compleat at once, also that your Hon"s would consider that he is a great looser at 10: pounds of tobacco a meale & alter it as you in your wisdome shall thinke reasonable.
And he shall Ever pray &c.
The same was referred for further Consideration. Cap' Whittington & M' Dorsey Returne & say that the Secretary has Ordered his Clk: to bring hither the Booke of Laws for their peruscall but as to the Originall Bills he sayes he can give noe acco' thereof.
M' Dent & the rest of the Messingers sent to the Councill returne and say they delivered their Message in Charge given them.

Original Journal. Mr Dorsey sent along with Capt Whittington upon the said Message Mr Dent, Mr Hamond, Mr Tasker, Mr Jones, Mr Harris, & Mr Greenfield sent up to the Councill to desire an Answer to the former vote of this house concerning the Constitution of the Gouernmt whereof their Honors haue had already a Coppy.

Then was Read the following petition.

To the Honble the house of Assembly now Sitting.
The humble petition of Garret V: sweringen Sheweth
That your Petr has engaged himselfe for Divers Sumes of Money & past Bills of Exchange for Liquors & provisions for the Supply of the Countrey this present Assembly; and unless he had so done he could not be fitted to Accomodate your honors at this present, & Notwithstanding all, was forc't to giue great rates, as is very well knowne, almost double what they were a yeare agoe.
And now your petr must sell for tobacco wch yr Honor well knowes the vallue off; soe that if rates be not altered from what they were last Sett, yr Petr will absolutely be a great looser, & neuer be able to discharge himselfe from his Money Obligacons he has run himselfe into, to Serve the Countrey as aforesaid.
Yr petr therefore humbly prayes that your honors would take his present Condicon into your serious Consideracon and that you would be pleased to Sett the rates that there be noe future trouble about altering accompts but that your petr may send them in compleat at once, also that your Honrs would consider that he is a great looser at 10: pds of tobacco a meale & alter it as you in your wisdome shall thinke reasonable.
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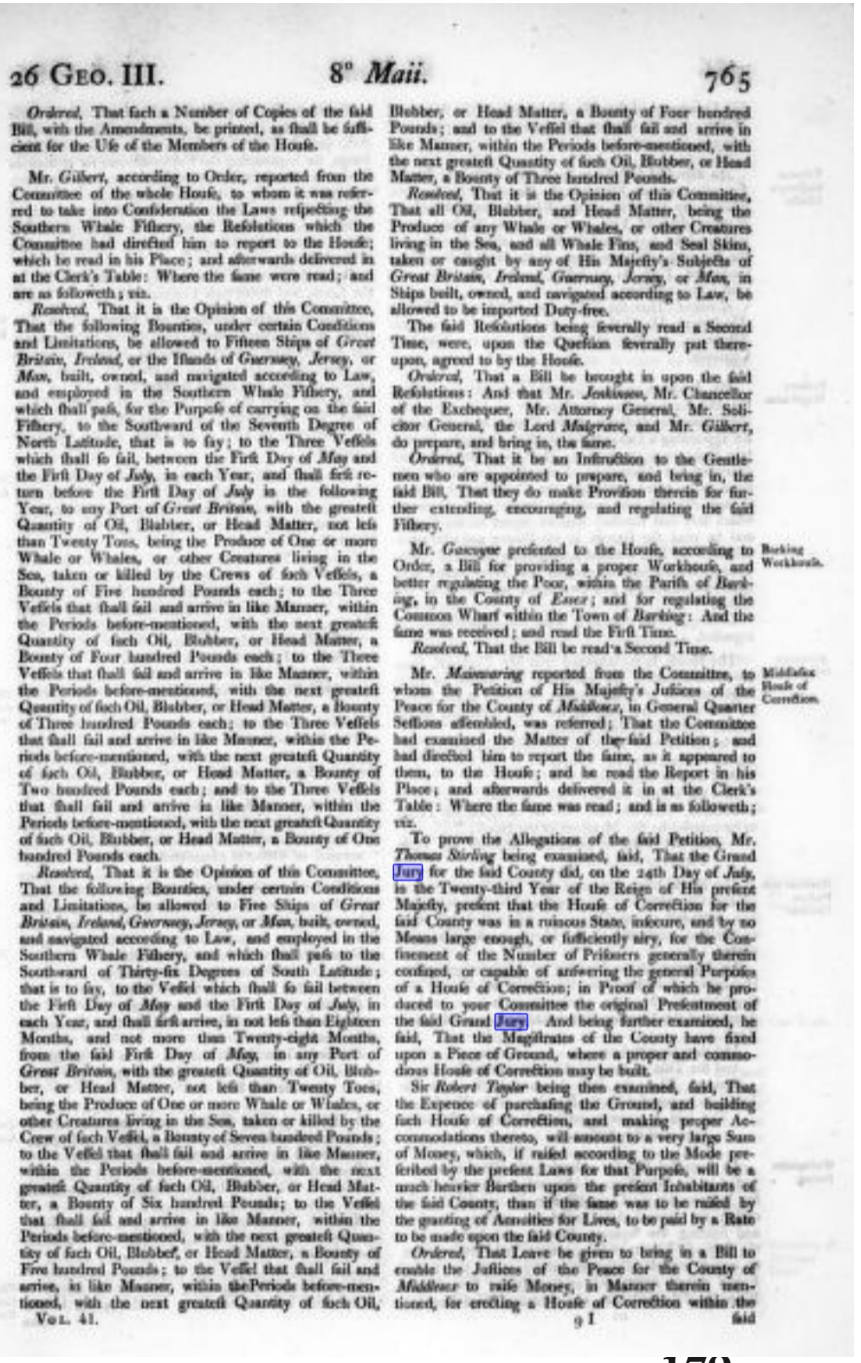
Mr Dent & the rest of the Messingers sent to the Councill returne and say they delivered their Message in Charge given them.
Message from the Councill by Mr Tench which was Expressed in the words following Viz' that his Excellency Comands the members of this honble house to Attend him at the Councill Chamber Immediately.
p. 15 Mr Speaker thereupon together with the rest of the houses Members goe up to the Council Chamber accordingly, where being admitted,

https://archive.org/details/archivesofmaryla19mary

A Petition of the Journeymen Weavers and others, employed in the manufacturing and finishing of Silk, Cotton, and Linen Handkerchiefs, Cotton Goods, and Small Wares, in the Town of Manchester, in the County of Lancaster, and Neighbourhood thereof, was also presented to the House, and read; Setting forth, 'That the Petitioners have, for a great Number of Years, been employed in weaving and finishing of Silk, Linen, Cotton, and other Goods, usually disposed of by Hawkers, Pedlars and Petty Chapmen ; and that in consequence of an Act passed in the last Session by n of Parliament, for granting to His Majesty certain Duties on Hawkers, Pedlars, and Petty Chapmen, and for regulating their Trade, great Numbers of the Petitioners have, with their Wives and Families, been thrown out of Employ, and others are in daily Expectation thereof, the Manufacturers who now employ them having conciderable Quantities of manufactured Goods upon hand, being deprived of the Opportunity of disposing thereof by reason of the Restrictions contained in the said Act: And therefore praying the House to take their Request into Consideration, and to grant the Petitioners such Relief as to the House shall seem best. And the said Petitions were severally ordered to lie upon the Table.



26 GEO. III. 8° *Maii.* 765

Ordered, That fuch a Number of Copies of the faid Bill, with the Amendments, be printed, as fhall be fufficient for the Ufe of the Members of the Houfe.

Mr. *Gilbert*, according to Order, reported from the Committee of the whole Houfe, to whom it was referred to take into Confideration the Laws refpecting the Southern Whale Fifhery, the Refolutions which the Committee had directed him to report to the Houfe; which he read in his Place; and afterwards delivered in at the Clerk's Table: Where the fame were read; and are as followeth; viz.

Reſolved, That it is the Opinion of this Committee, That the following Bounties, under certain Conditions and Limitations, be allowed to Fifteen Ships of *Great Britain*, *Ireland*, or the Iſlands of *Guernſey*, *Jerſey*, or *Man*, built, owned, and navigated according to Law, and employed in the Southern Whale Fifhery, and which fhall paſs, for the Purpoſe of carrying on the faid Fifhery, to the Southward of the Seventh Degree of North Latitude, that is to fay; to the Three Veſſels which fhall ſo ſail, between the Firſt Day of *May* and the Firſt Day of *July*, in each Year, and fhall firſt return before the Firſt Day of *July* in the following Year, to any Port of *Great Britain*, with the greateſt Quantity of Oil, Blubber, or Head Matter, not leſs than Twenty Tons, being the Produce of One or more Whale or Whales, or other Creatures living in the Sea, taken or killed by the Crews of ſuch Veſſels, a Bounty of Five hundred Pounds each; to the Three Veſſels that fhall ſail and arrive in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of Four hundred Pounds each; to the Three Veſſels that fhall ſail and arrive in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of Three hundred Pounds each; to the Three Veſſels that fhall ſail and arrive in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of Two hundred Pounds each; and to the Three Veſſels that fhall ſail and arrive in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of One hundred Pounds each.

Reſolved, That it is the Opinion of this Committee, That the following Bounties, under certain Conditions and Limitations, be allowed to Five Ships of *Great Britain*, *Ireland*, *Guernſey*, *Jerſey*, or *Man*, built, owned, and navigated according to Law, and employed in the Southern Whale Fifhery, and which fhall paſs to the Southward of Thirty-ſix Degrees of South Latitude; that is to ſay, to the Veſſel which fhall ſo ſail between the Firſt Day of *May* and the Firſt Day of *July*, in each Year, and fhall firſt arrive, in not leſs than Eighteen Months, and not more than Twenty-eight Months, from the ſaid Firſt Day of *May*, in any Port of *Great Britain*, with the greateſt Quantity of Oil, Blubber, or Head Matter, not leſs than Twenty Tons, being the Produce of One or more Whale or Whales, or other Creatures living in the Sea, taken or killed by the Crew of ſuch Veſſel, a Bounty of Seven hundred Pounds; to the Veſſel that fhall ſail and arrive in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of Six hundred Pounds; to the Veſſel that fhall ſail and arrive in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of Five hundred Pounds; to the Veſſel that fhall ſail and arrive, in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of Four hundred Pounds; and to the Veſſel that fhall ſail and arrive in like Manner, within the Periods before-mentioned, with the next greateſt Quantity of ſuch Oil, Blubber, or Head Matter, a Bounty of Three hundred Pounds.

Reſolved, That it is the Opinion of this Committee, That all Oil, Blubber, and Head Matter, being the Produce of any Whale or Whales, or other Creatures living in the Sea, and all Whale Fins, and Seal Skins, taken or caught by any of His Majeſty's Subjects of *Great Britain*, *Ireland*, *Guernſey*, *Jerſey*, or *Man*, in Ships built, owned, and navigated according to Law, be allowed to be imported Duty-free.

The ſaid Reſolutions being ſeverally read a Second Time, were, upon the Queſtion ſeverally put thereupon, agreed to by the Houſe.

Ordered, That a Bill be brought in upon the ſaid Reſolutions: And that Mr. *Jenkinſon*, Mr. Chancellor of the Exchequer, Mr. Attorney General, Mr. Solicitor General, the Lord *Maigrave*, and Mr. *Gilbert*, do prepare, and bring in, the ſame.

Ordered, That it be an Inſtruction to the Gentlemen who are appointed to prepare, and bring in, the ſaid Bill, That they do make Proviſion therein for further extending, encouraging, and regulating the ſaid Fifhery.

Barking Workhouſe.

Mr. *Gascoyne* preſented to the Houſe, according to Order, a Bill for providing a proper Workhouſe, and better regulating the Poor, within the Pariſh of *Barking*, in the County of *Eſſex*; and for regulating the Common Wharf within the Town of *Barking*: And the ſame was received; and read the Firſt Time.

Reſolved, That the Bill be read a Second Time.

Middleſex Houſe of Correction.

Mr. *Mainwaring* reported from the Committee, to whom the Petition of His Majeſty's Juſtices of the Peace for the County of *Middleſex*, in General Quarter Seſſions aſſembled, was referred; That the Committee had examined the Matter of the ſaid Petition; and had directed him to report the ſame, as it appeared to them, to the Houſe; and he read the Report in his Place; and afterwards delivered it in at the Clerk's Table: Where the ſame was read; and is as followeth; viz.

To prove the Allegations of the ſaid Petition, Mr. *Thomas Stirling* being examined, ſaid, That the Grand Jury for the ſaid County did, on the 24th Day of *July*, in the Twenty-third Year of the Reign of His preſent Majeſty, preſent that the Houſe of Correction for the ſaid County was in a ruinous State, inſecure, and by no Means large enough, or ſufficiently airy, for the Confinement of the Number of Priſoners generally therein confined, or capable of anſwering the general Purpoſes of a Houſe of Correction; in Proof of which he produced to your Committee the original Preſentment of the ſaid Grand Jury. And being further examined, he ſaid, That the Magiſtrates of the County have fixed upon a Piece of Ground, where a proper and commodious Houſe of Correction may be built.

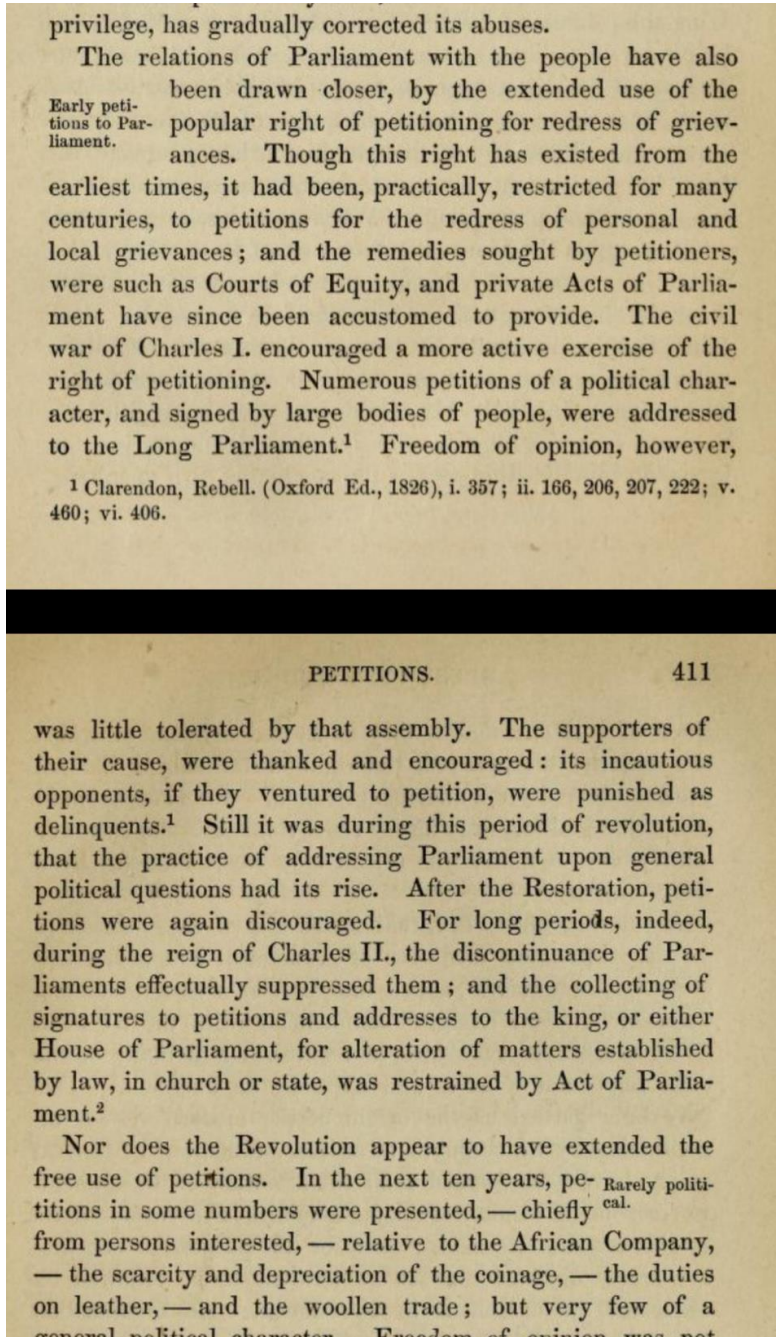
Sir *Robert Taylor* being then examined, ſaid, That the Expence of purchaſing the Ground, and building ſuch Houſe of Correction, and making proper Accommodations thereto, will amount to a very large Sum of Money, which, if raiſed according to the Mode preſcribed by the preſent Laws for that Purpoſe, will be a much heavier Burthen upon the preſent Inhabitants of the ſaid County, than if the ſame was to be raiſed by the granting of Annuities for Lives, to be paid by a Rate to be made upon the ſaid County.

Ordered, That Leave be given to bring in a Bill to enable the Juſtices of the Peace for the County of *Middleſex* to raiſe Money, in Manner therein mentioned, for erecting a Houſe of Correction within the

https://archive.org/details/sim_great-britain-house-of-commons-journal_1786_41

Constitutional history of England : since the accession of George Third, 1760-1860: in two volumes. / By Thomas Erskine May

The relations of Parliament with the people have also been drawn closer, by the extended use of the Early petitions to popular right of petitioning for redress of grievances. Though this right has existed from the earliest times, it had been, practically, restricted for many centuries, to petitions for the redress of personal and local grievances; and the remedies sought by petitioners, were such as Courts of Equity, and private Acts of Parliament have since been accustomed to provide. The civil war of Charles I encouraged a more active exercise of the right of petitioning. Numerous petitions of a political character, and signed by large bodies of people, were addressed to the Long Parliament. Freedom of opinion, however, was little tolerated by that assembly. The supporters of their cause, were thanked and encouraged: its incautious opponents, if they ventured to petition, were punished as delinquents. Still it was during this period of revolution, that the practice of addressing Parliament upon general political questions had its rise. After the Restoration, petitions were again discouraged. For long periods, indeed, during the reign of Charles II., the discontinuance of Parliaments effectually suppressed them; and the collecting of signatures to petitions and addresses to the king, or either House of Parliament, for alteration of matters established by law, in church or state, was restrained by Act of Parliament.



privilege, has gradually corrected its abuses.

The relations of Parliament with the people have also been drawn closer, by the extended use of the popular right of petitioning for redress of grievances. Though this right has existed from the earliest times, it had been, practically, restricted for many centuries, to petitions for the redress of personal and local grievances; and the remedies sought by petitioners, were such as Courts of Equity, and private Acts of Parliament have since been accustomed to provide. The civil war of Charles I. encouraged a more active exercise of the right of petitioning. Numerous petitions of a political character, and signed by large bodies of people, were addressed to the Long Parliament.[1] Freedom of opinion, however,

Early petitions to Parliament.

[1] Clarendon, Rebell. (Oxford Ed., 1826), i. 357; ii. 166, 206, 207, 222; v. 460; vi. 406.

PETITIONS. 411

was little tolerated by that assembly. The supporters of their cause, were thanked and encouraged: its incautious opponents, if they ventured to petition, were punished as delinquents.[1] Still it was during this period of revolution, that the practice of addressing Parliament upon general political questions had its rise. After the Restoration, petitions were again discouraged. For long periods, indeed, during the reign of Charles II., the discontinuance of Parliaments effectually suppressed them; and the collecting of signatures to petitions and addresses to the king, or either House of Parliament, for alteration of matters established by law, in church or state, was restrained by Act of Parliament.[2]

Nor does the Revolution appear to have extended the free use of petitions. In the next ten years, petitions in some numbers were presented, — chiefly from persons interested, — relative to the African Company, — the scarcity and depreciation of the coinage, — the duties on leather, — and the woollen trade; but very few of a

Rarely political.

https://archive.org/details/constitutionalhi01mayt_0

Pg. 113

"Another reason why no action should be taken by the Legislative Assembly, and which leads me to believe that no good cause exists for its repeal, is the fact that NO PETITIONS HAVE BEEN PRESENTED upon the subject, which could not have been the case
if desired by the people, as it is a subject in which every person has a vital interest."

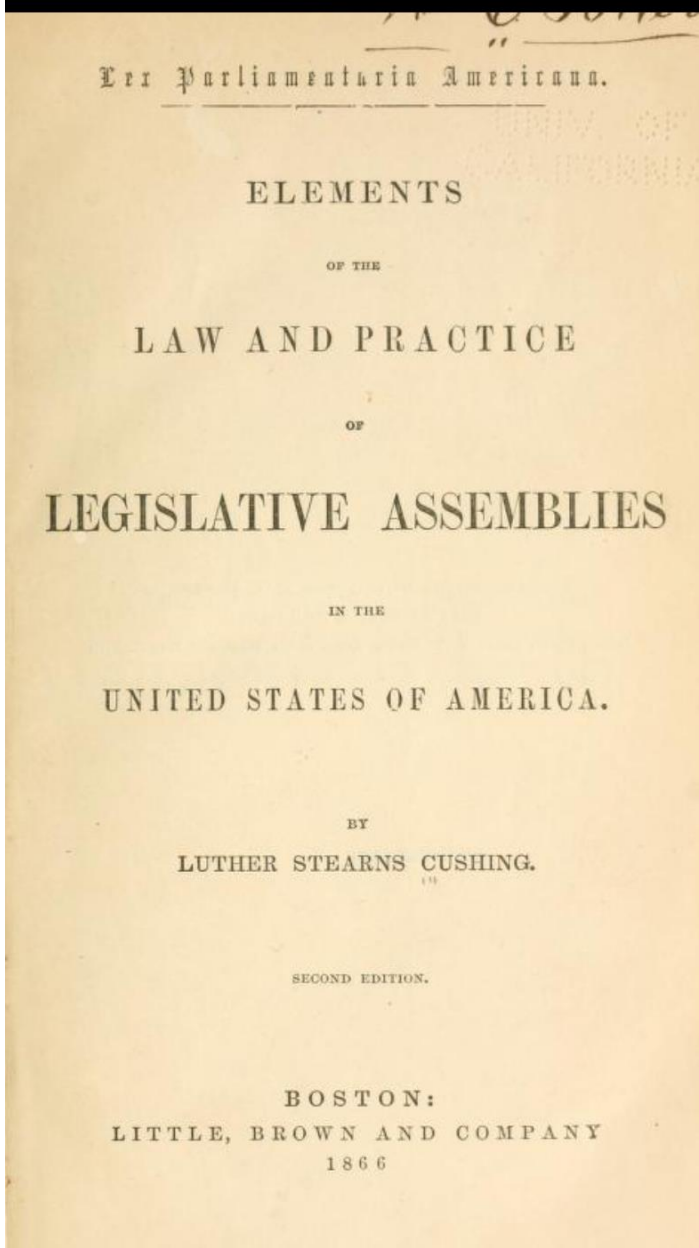
Journals of the Council and House of Representatives of the Fourth Session-
Idaho
1867

ELEMENTS OF THE LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES IN THE UNITED STATES OF AMERICA LUTHER STEARNS CUSHING - 1866

Pg.434
1074. It is with respect to measures of a public character, that the right of petition has been deemed the most sacred, and has been guarded with the most care; as it is by this means only that constituents can express their opinion upon great national questions, and bring their opinions to bear directly upon the legislative power. Petitions of this description do not rest upon the testimony of witnesses for their facts; nor do they trust to the ability and eloquence of counsel for their arguments and illustrations. They are simply to be regarded as expressing the deliberate convictions of the petitoners, upon facts which are notorious or accessible to all, and founded in arguments and considerations which appeal to the reason and judgment of all. 1075. The legitimate effect, therefore, of their representations, depends upon two considerations, namely, the influence which popular opinion is entitled to have upon the acts of government, and upon the facts and arguments which petitioners bring forward in support of their opinions.

Pg.435-436
In a petition, the statements of the petitioners are received as the ground of the prayer which they make. A **memorial** which is similar in its statements and allegations to a petition, but is unaccompanied by a prayer, is said to be **objectionable in point of form**, because it assumes to speak as an equal and to advise the legislature as to its duties, without any particular object in view ; **but such papers have nevertheless been received as petitions, when there was no other objection to them**, but in point of form, and they **contain language equivalent to a prayer.** A remonstrance, which may be regarded as a similar representation, unaccompanied by a prayer, and intended to express opposition to the passing of some act, or the adoption of some pending or contemplated measure, is equally objectionable in point of form, and for the same reasons. Papers with this title, when drawn up in respectful language, and amounting substantially to a petition against some proposed or pending measure, have been received as petitions. But, in general, it appears to be the usage, especially when the object is to call in question the proceedings of the house, to reject papers of this description. A. protest is similar in character to a remonstrance, but expressed in stronger language. A declaration against any measure does not seem to be different from a protest or remonstrance. Papers bearing any of these tities, if they contain a prayer, are received as petitions. It may be observed in general, that the objections to remonstrances, protests, etc, are, for the most part, merely formal. The same statements, which they contain, may be put into the form of petitions, and are then receivable. A paper expressing approbation of the proceedings of the house is equally objectionable with a protest or remonstrance, and is not receivable, unless it bears the form of a petition

Pg.432- Pg. 439 Right of petition
Pg.439- Pg. 449 Of petitions as to their form
Pg.441 As to the several parts of a petition
Pg.447 As to matters extraneous to a petition
Pg.449- Pg. 454 Of petitions as to their substance
Pg.454- Pg. 465 Of the presentation and reading of petitions
Pg.454 Petitions for relief out of public money
Pg.454- Pg. 465 Of certain classes of petitions to such preliminary proceedings are peculiar
Pg.466 election petitions [political arguments are legislative NOT JUDICIAL..see Luther v Borden.]
Pg.468 Petitions charging or implicating members
Pg.469 Petitions against tax bills
Pg.470 Private petitions and previous petitions
Pg.471-476 present practise with regard to presentation of petitions
Pg.476 subsequent proceedings on petitions


Lex Parliamentaria Americana.

ELEMENTS

OF THE

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES

IN THE

UNITED STATES OF AMERICA.

BY

LUTHER STEARNS CUSHING.

SECOND EDITION.

BOSTON:
LITTLE, BROWN AND COMPANY
1866

https://archive.org/details/lexparliamentari00cush

PETITIONS PUBLIC PRIVATE

1083. Before proceeding further with the subject of petitions, it will be useful to point out, with more distinctness, the difference between those which are private and those which are public. A private petition is one, which prays for some proceeding on the part of parliament, usually the passing of a bill, for the particular interest or benefit of any person or persons, public company, or corporation, municipal or otherwise, or of a parish, city, county, or other locality ; or which prays that any such bill, when introduced, may not pass, or that the petitioners may be heard against it.

All petitions, which have in view a measure of national import, or one in which the whole community is interested, are public petitions. Private petitioners are allowed to prove their statements by evidence, and to be heard by themselves or their counsel.

Public petitioners have no such right. The former have in view some specific, definite, object relating to themselves. The latter merely express their opinion, including of course, their wishes in reference to some public measure. The weight and influence of a private petition depend upon the facts which it sets forth, and the evidence by which they are substantiated. The respect due to public petitions must, of course, depend not so much upon the statements of fact, and of argument, which they contain, as upon the number and the character of the petitioners.

Private petitions, in ordinary times, and in countries where a proper judicial system is established and in operation, cannot reasonably be expected to exceed a very moderate...]

Article III. As to the Signing of a Petition.

1092. The general rule of parliament with reference to the signing of petitions, as expressed in a resolution of the house of commons, of November 14, 1689,- is, that " all petitions presented to the house ought to be signed by the petitioners, with their own hands, by their names or marks ..][...1095. The rule under consideration does not extend to the individuals composing any municipal or other corporation or chartered body which has a legal existence, and which must therefore be recognized in its aggregate capacity by parliament.- The petition of such a body should be signed by the proper o/Iicers, and authenticated by its common seal, if it has one,'^ otherwise by its officers only...]

them, and only to refer the examination of them in particular cases to committees.[3]

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[1] May, 382.
[2] May, 382.
[3] May, 382.

CHAP. VII.] PETITIONS. 439

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The Comittee of Grievances goe out upon their Charge. Original Journal.
The house Adjournes for halfe an houre.

The house again mett & were present as before.
The Comittee of Grievances bring in their further Report to the house which being grounded upon the petition & Complainte of Coll Jowles the same being first read did run in these following words Viz[t]

To the Hon[ble] the Lower house of Assembly.
The Humble petition of Coll Henry Jowles
Sheweth
That your petitioner in the month of Aprill last past was sent for by an Ord[r] of Gouerno[r] and Councill to make his Imediate appearance before them, there to answer such matters & things as should be Objected ag[t] him, where to his great Charge, Expence & trouble, he was forced to wayte & attend ffive dayes before he could know what they had to allegde ag[t] him, at last being called to answer, they had nothing to Object ag[t] him but a lett[r] he had writ to the Hon[ble] S[r] Thomas Laurence upon his being carryed to prison, a Coppy whereof for your Hon[rs] better Satisfaction is here Enclosed; for w[ch] Lett[r] (though there was nothing in it but what Comon Civillity might Obleidge him or any man to write) he was compelled imediatly to giue them Bond w[th] good security of a Thousand pds St[g] for his good behaviour or Else goe to prison, This y[r] pet[r] did pforme, & hoped then he might be at quiett but about the 25[th] of August last past came another Order of Gouerno[r] & Councill to Cap[t] John Bigger to Take your pet[r] into Custody & him to safe keepe till he finde good security of a Nother Thousand pounds St[g] for his good behaviour & to make his personall appeareance at the next provinciall Court there to answer unto such things as should be Objected ag[t] him on behalfe of their Maj[ties] in generall Termes w[th]out mentioning any particular Matter which ought to haue p. 11
been Incerted, This likewise your Pet[r] was Compelled to give, & did give rather then lye in prison, And last of all since the death of the Gouerno[r] upon the 14[th] day of September Cap[t] Keech w[th] his Lieutenant came to your pet[rs] house and apprehended him by an Ord[r] from Coll Ninian Beale which was in pursuance of an Ord[r] of Councill to Carry him to his owne house & clap a safe Guard ouer him (without Expressing one word or tittle for what.) upon which your pet[r] utterly refused to yeild any Obedience to it, and by that meanes w[th] much Truble has made a Shift to preserve his Liberty by keeping out of the way till he might haue the happiness and ffreedom of Addressing himselfe to this hon[ble] house

Maryland

A Petition in 1693 to the Lower house of Assembly for an ongoing malicious prosecutions, multiple arrests with no formal charges except he had on him a personal letter he wrote to St Thomas Laurence that hurt their feelings. He cites "Christian Liberty" and "The Great Charter of England" by the 9th year of Henry 3, Chpt 14.

Original Journal. of Assembly, Thus has your pet[r] been most unworthily & Ungratefully requited for the Service he had done his Maj[tie] in the late Revolution which notwithstanding the King himselfe was graciously pleased soe farr to Accept off, as to make y[r] pet[r] one of his Hon[ble] Councill & to place him in the very first Ranke of them, out of which also they haue most Maliciously & Injuriously remoued him without any cause, and contrary to the Great Charter of England, which hath provided that noe ffreeman shall be destroyed or Condemned but by Lawfull Judgm[t] of his peeres, and even then to be Amerced or punished according to the quantity & Quality of his offence as appeares by the 9[th] H: 3 C. 14: By all w[ch] it is most apparent, They haue contrived & to the utmost of their power doe Endeavour the Utter Ruine & destruction of the pet[r] & his posterity.

Wherefore y[r] pet[r] humbly prayes this hon[ble] house of Assembly that they will please to take his case into their serious & Judicious Consideracōns to protect him from any violence may be offered him whilest he is makeing this his Just Complaint and that you will please to Ord[r] his accusers (if any) to lay their Accusations open before your Hon[rs] & upon due Examinacōn if it shall appeare that he has done any thing not Justifyable or unworthy that trust & confidence his Maj[tie] Reposed in him, that he may then suffer according to his demeritts otherwise that he may be cleared & acquitted of his Bonds afd. And be again restored to those places of Trust & Hon[r] their Maj[ties] were pleased to Conferr upon him &

As in Duty bound he shall Ever pray &c.

Afterward was Ordered the ffollowing Lett[r] to be Read.

Hon[rd] S[r]

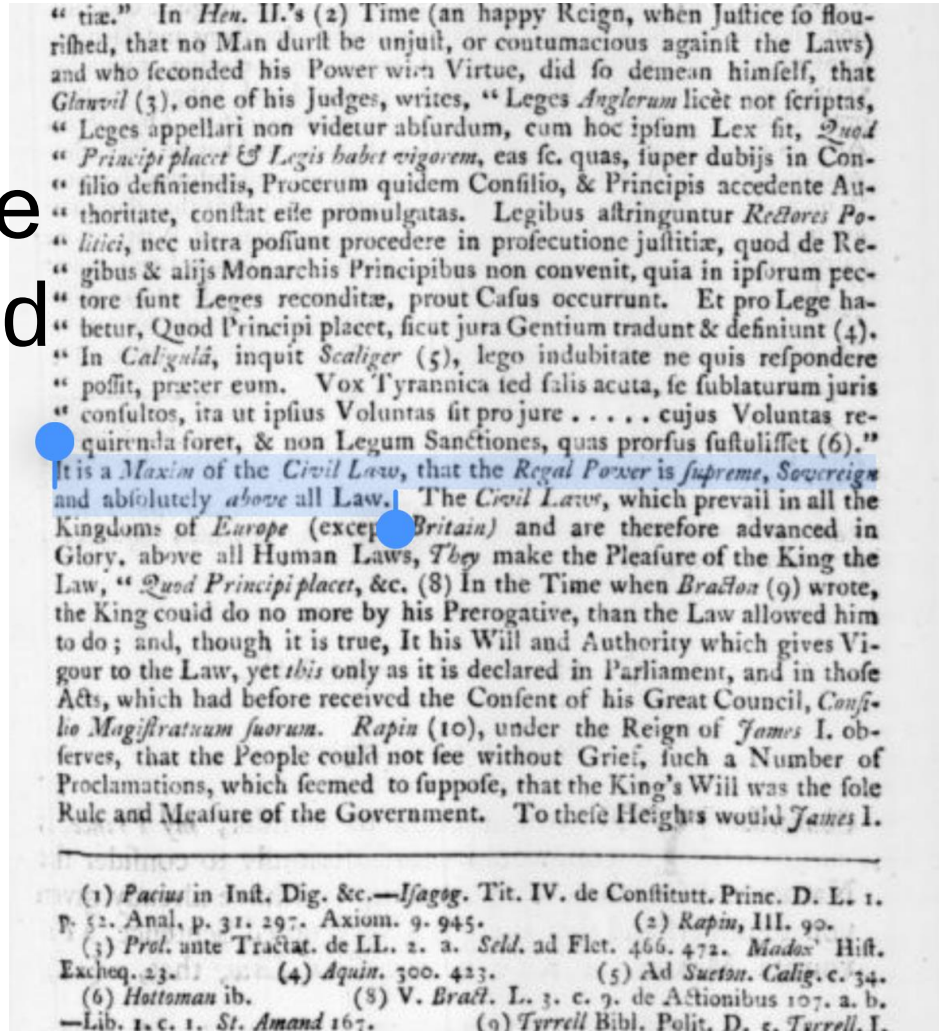
Coppy of Coll Jowles Letter to S[r] Tho. Laurence

I haue been under a great dissatisfaction euer since my Last Visitt, w[ch] was rendred so fruiteless & Impertinent by that watchfull surly old Cerberus y[r] Guardian, that I could not haue the Oppertunity so much as to Enquire into the Causes of your Calamity nor offer y[r] Hon[r] the Civility of my Assistance in any thing wherein I might be Serviceable: wee read that in the Reignes of some of the Cæsars (Tyrants) to shew any kindness or respect, nay to be of a known familiarity with a person proscribed, was Crime Sufficient to bring a man vnder the same proscription; But I hope it is not soe now, These are surely dayes of more Christian Liberty, & in this Confidence I haue sent my Sonn in law to wayte on your hon[r] w[th] the Tender of

https://archive.org/details/archivesofmaryla19mary

CODE

[…It is a Maxim of the Civil Law, that the Regal Power is supreme, Sovereign and absolutely above all Law.
The Civil Laws which prevail in all the Kingdoms of Europe (except Britain) and are therefore advanced in Glory, above all Human Laws, They make the Pleasure of the King the Law…]”

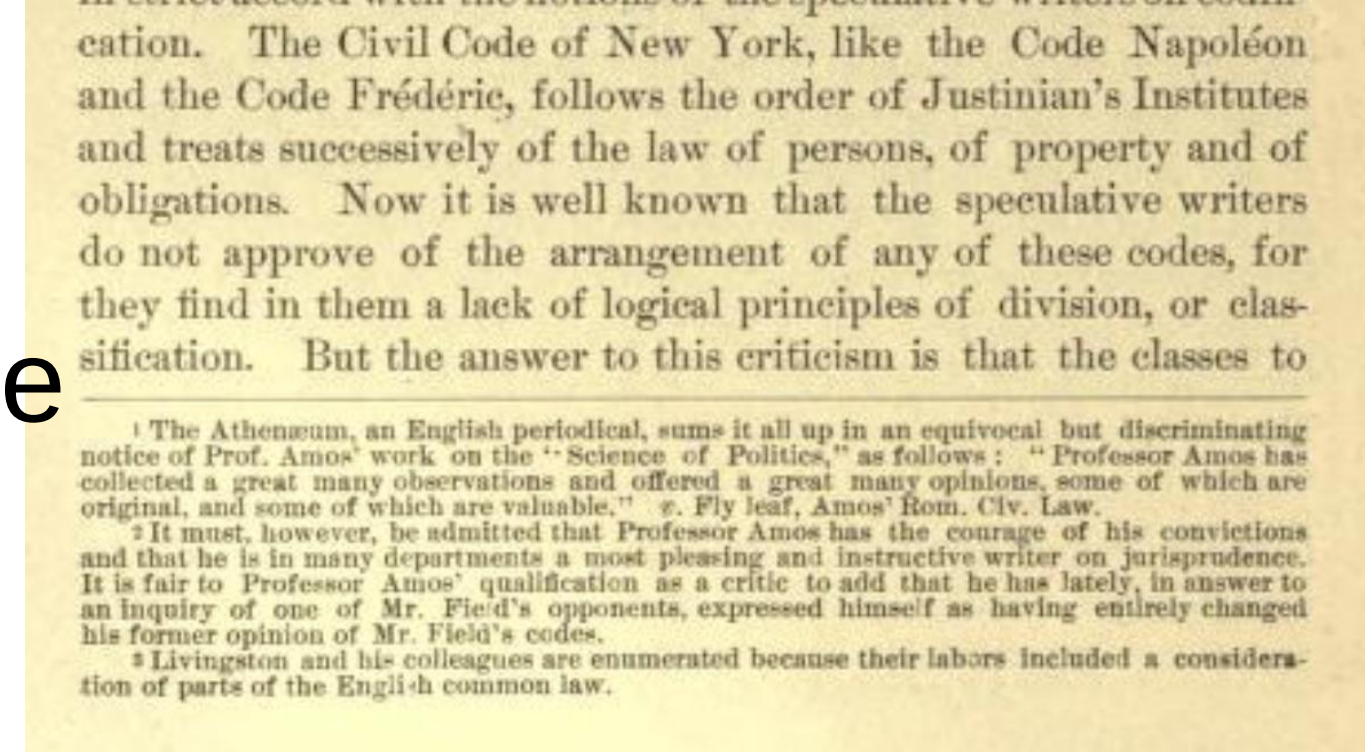


“ tiæ.” In *Hen.* II.'s (2) Time (an happy Reign, when Juſtice ſo flouriſhed, that no Man durſt be unjuſt, or contumacious againſt the Laws) and who ſeconded his Power with Virtue, did ſo demean himſelf, that *Glanvil* (3), one of his Judges, writes, “ Leges *Anglorum* licèt not ſcriptas, “ Leges appellari non videtur abſurdum, cum hoc ipſum Lex ſit, *Quod* “ *Principi placet & Legis habet vigorem*, eas ſc. quas, ſuper dubijs in Con- “ filio definiendis, Procerum quidem Conſilio, & Principis accedente Au- “ thoritate, conſtat eſſe promulgatas. Legibus aſtringuntur *Rectores Po-* “ *litici*, nec ultra poſſunt procedere in profecutione juſtitiæ, quod de Re- “ gibus & alijs Monarchis Principibus non convenit, quia in ipſorum pec- “ tore ſunt Leges reconditæ, prout Caſus occurrunt. Et pro Lege ha- “ betur, Quod Principi placet, ſicut jura Gentium tradunt & definiunt (4). “ In *Caligulâ*, inquit *Scaliger* (5), lego indubitate ne quis reſpondere “ poſſit, præter eum. Vox Tyrannica ſed ſalis acuta, ſe ſublaturum juris “ conſultos, ita ut ipſius Voluntas ſit pro jure . . . . . cujus Voluntas re- quirenda foret, & non Legum Sanctiones, quas prorſus ſuſtuliſſet (6).”

It is a *Maxim* of the *Civil Law*, that the *Regal Power* is *ſupreme*, *Sovereign* and abſolutely *above* all Law. The *Civil Laws*, which prevail in all the Kingdoms of *Europe* (except *Britain)* and are therefore advanced in Glory, above all Human Laws, *They* make the Pleaſure of the King the Law, “ *Quod Principi placet*, &c. (8) In the Time when *Bracton* (9) wrote, the King could do no more by his Prerogative, than the Law allowed him to do; and, though it is true, It his Will and Authority which gives Vigour to the Law, yet *this* only as it is declared in Parliament, and in thoſe Acts, which had before received the Conſent of his Great Council, *Conſilio Magiſtratuum ſuorum*. *Rapin* (10), under the Reign of *James* I. obſerves, that the People could not ſee without Grief, ſuch a Number of Proclamations, which ſeemed to ſuppoſe, that the King's Will was the ſole Rule and Meaſure of the Government. To theſe Heights would *James* I.

(1) *Pacius* in Inſt. Dig. &c.—*Iſagog.* Tit. IV. de Conſtitutt. Princ. D. L. 1. p. 52. Anal. p. 31. 297. Axiom. 9. 945. (2) *Rapin*, III. 90.
(3) *Prol.* ante Tractat. de LL. 2. a. *Seld.* ad Flet. 466. 472. *Madox'* Hiſt. Exchcq. 23. (4) *Aquin.* 300. 423. (5) Ad *Sueton. Calig.* c. 34.
(6) *Hottoman* ib. (8) V. *Bract.* L. 3. c. 9. de Actionibus 107. a. b.
—Lib. 1. c. 1. *St. Amand* 167. (9) *Tyrrell* Bibl. Polit. D. 5. *Tyrrell* I.

The Civil Code of New York, like the Code Napoléon and the Code Frédéric, follows the order of Justinian's Institutes and treats successively of the law of persons, of property and of obligations.



cation. The Civil Code of New York, like the Code Napoléon and the Code Frédéric, follows the order of Justinian's Institutes and treats successively of the law of persons, of property and of obligations. Now it is well known that the speculative writers do not approve of the arrangement of any of these codes, for they find in them a lack of logical principles of division, or classification. But the answer to this criticism is that the classes to

[1] The Athenæum, an English periodical, sums it all up in an equivocal but discriminating notice of Prof. Amos' work on the "Science of Politics," as follows: "Professor Amos has collected a great many observations and offered a great many opinions, some of which are original, and some of which are valuable." *v.* Fly leaf, Amos' Rom. Civ. Law.

[2] It must, however, be admitted that Professor Amos has the courage of his convictions and that he is in many departments a most pleasing and instructive writer on jurisprudence. It is fair to Professor Amos' qualification as a critic to add that he has lately, in answer to an inquiry of one of Mr. Field's opponents, expressed himself as having entirely changed his former opinion of Mr. Field's codes.

[3] Livingston and his colleagues are enumerated because their labors included a consideration of parts of the English common law.

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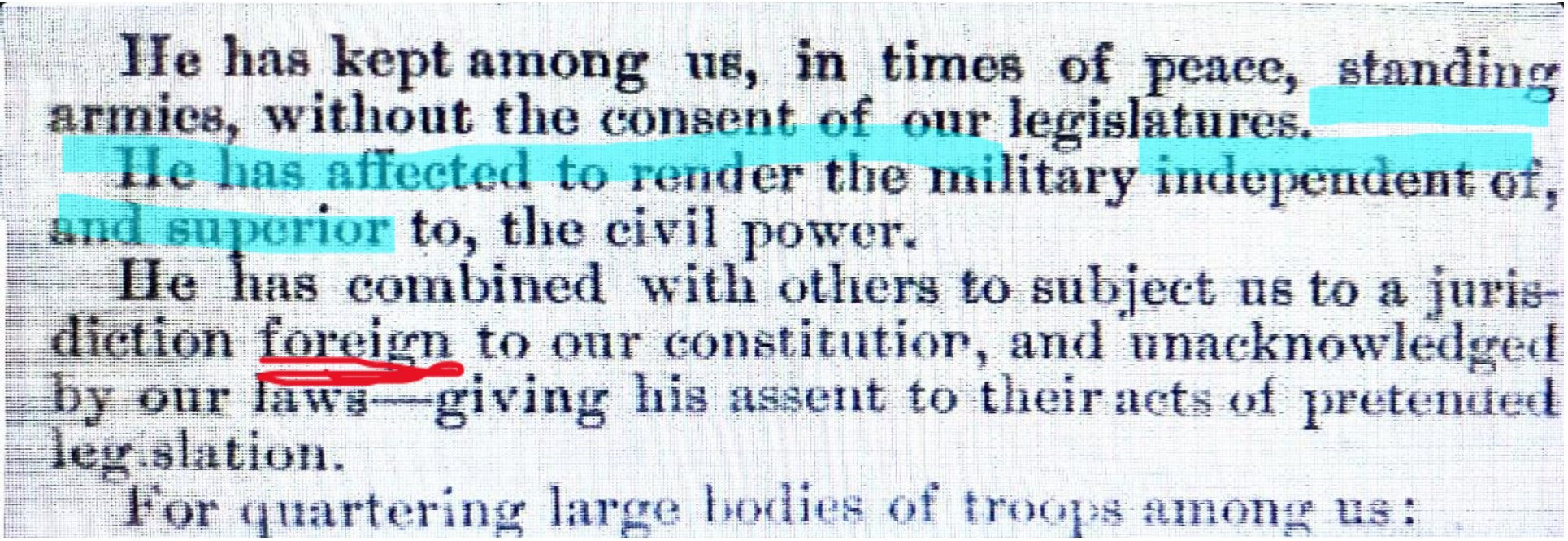
Code= Foreign Law



He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

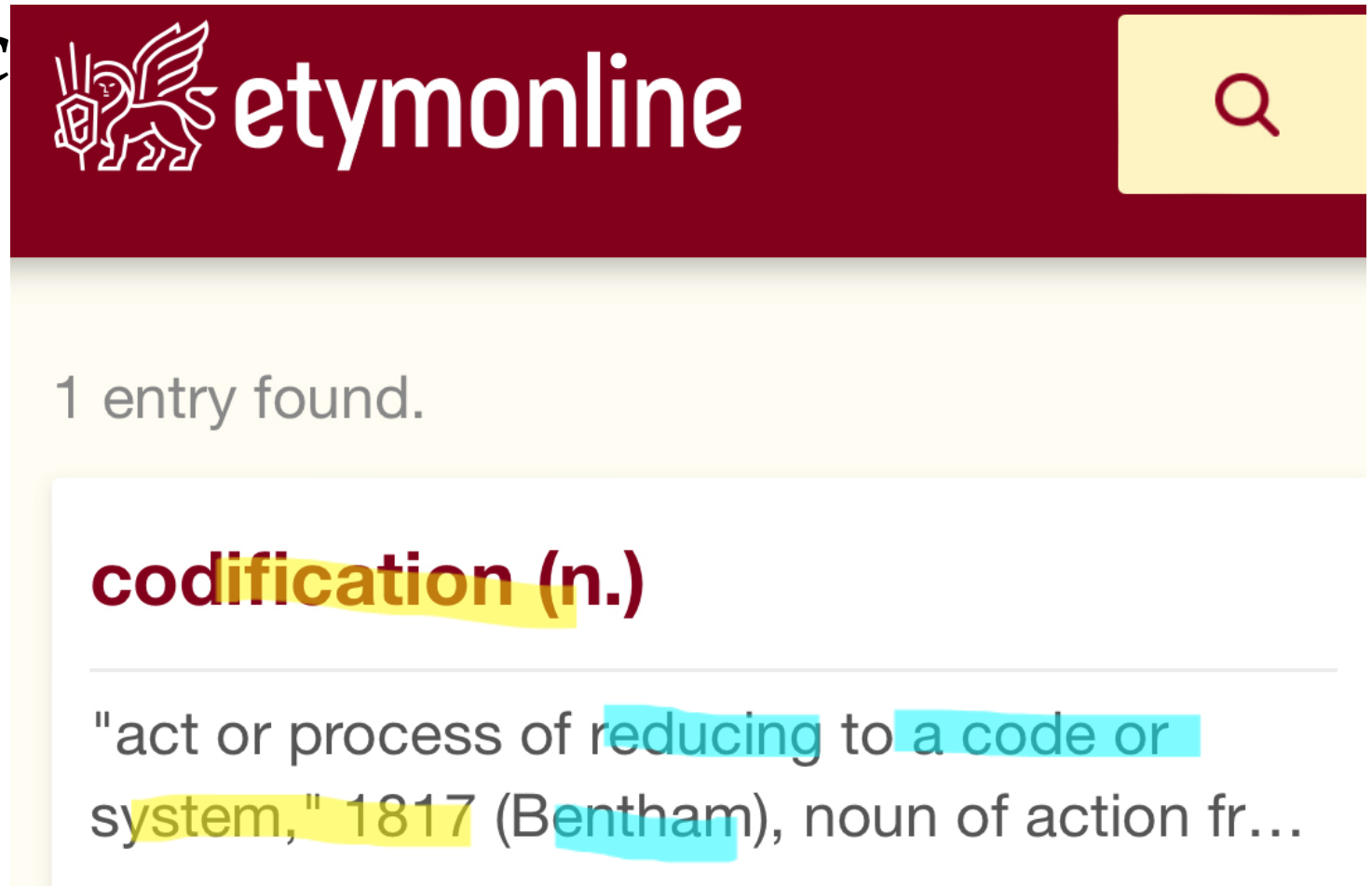
He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of troops among us:

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws — giving his assent to their acts of pretended legislation. [What constitution are they referring to in 1776?]

https://archive.org/details/revisedlawsofidaho00/page/n9/mode/2up

Civil Law=Roman Civil Law, Codification, Code Commissions,
Maine, Holland, Austin, Mill, Bentham, Maxwell, Field, etc



Theodosian Code

CODE, *noun*
1. A collection of the laws and constitutions of the Roman emperors, made by order of Justinian, containing twelve books. The name is also given to other collections of Roman laws; as the Theodosian *code* Hence in general,
2. Any collection or digest of laws. Webster's 1828

The ***Codex Theodosianus*** ("Theodosian Code") is a compilation of the laws of the Roman Empire under the Christian emperors since 312. A commission was established by Emperor Theodosius II and his co-emperor Valentinian III on 26 March 429 and the compilation was published by a constitution of 15 February 438. It went into force in the eastern and western parts of the empire on 1 January 439. The original text of the codex is also found in the *Breviary of Alaric* (also called *Lex Romana Visigothorum*), promulgated on 2 February 506...]

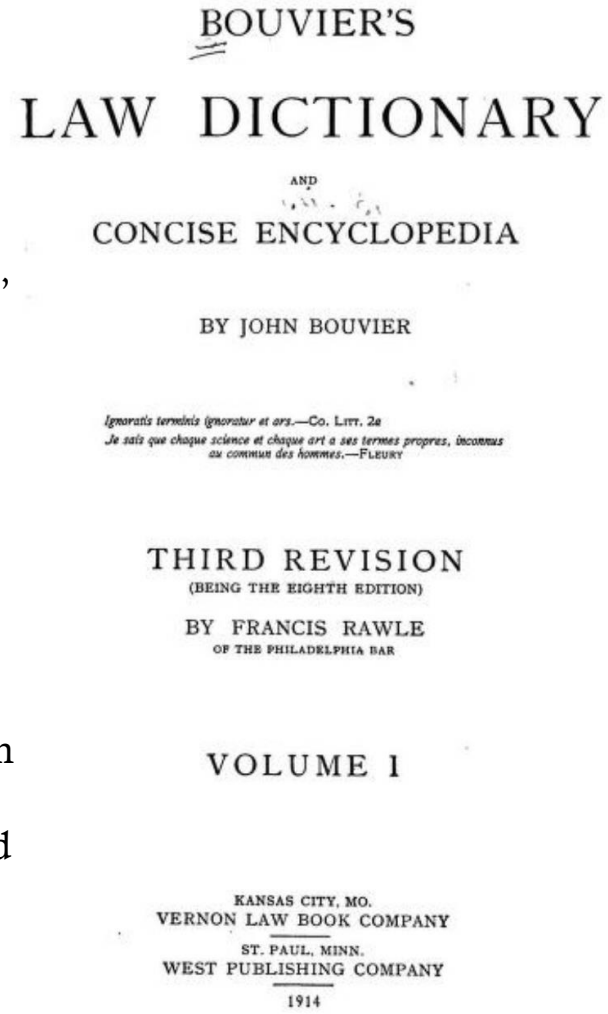
[..On 26 March 429, Emperor Theodosius II announced to the Senate of Constantinople his intention to form a committee to codify all of the laws (*leges*, singular *lex*) from the reign of Constantine up to Theodosius II and Valentinian III...]

[..Their product was a collection of 16 books containing more than 2,500 constitutions issued between 313 and 437, while, at the same time, omitting ["]obsolete["] provisions and superfluous phrases, and making additions, emendations, and alterations. John F. Matthews illustrated the importance of Theodosius' code when he said, "the Theodosian Code was the first occasion since the Twelve Tables on which a Roman government had attempted by public authority to collect and publish its *leges*." The code covers political, socioeconomic, cultural, and religious subjects of the 4th and 5th centuries in the Roman Empire.]

https://en.wikipedia.org/wiki/Codex_Theodosianus

Pg.510

Colonial, Codes. Of these there were several adopted in the colonies prior to the Revolution.In ' 1665 a code prepared by Lord Chancellor Clarendon, called the "Duke's Laws," was promulgated and went into operation at Long Island and West Chester, New York. Afterwards its provisions slowly made their way in New York .and the other provinces. It was an attempt to state the law relating to the rights of persons and property, and of procedure both civil and criminal .The Massachusetts colony, in March, 1634, appointed a committee to revise the law. Other committees were appointed in 1635 and 1637. Maryland adopted a code in 1639. In Massachusetts in 1641, a code of laws was adopted which was called "The Liberties of the Massachusetts Colony In New England." Connecticut adopted a code in 1650, chiefly copied from the Massachusetts code. Virginia appears to have adopted a body of laws in 1611, and in 1656 their laws were reduced into one volume. State Codes. New York is the pioneer in the work of codification. In that state the first act relating to procedure after the organization of state government was passed March 16, 1778. Various other acts were passed between 1801 and 1813. In 1813 there was a general revision of the law, and the subject of practice of the law. In 1828 the revisers collected into one act the various provisions relating to practice in all the courts which was made a part of the Revised Statutes. It is said that this part of the Revised Statutes constituted the first code of civil procedure in New York. It embraced nearly all the practice in all the courts and has been the basis of subsequent code revision. In 1848 the "Code of Procedure" was adopted. David Dudley Field, the eminent writer on this subject, had begun his work on law reform in 1839. In 1848 a commission of which he was chairman produced the "Code of Procedure," containing 391 sections, which was adopted in that year. This code was largely amended in 1849, and has received frequent amendments at various times since that year. The laws of Pennsylvania were extensively revised in 1833-1836, upon the Report of Commissioners appointed by the legislature, William Rawle, Joel Jones and Thomas I. Wharton. Codification has proceeded in many states, especially in procedure. The list of states cannot be given here. [ALL OF THEM] The enactment of uniform laws on special branches of the law, in many states and in England, is a movement towards codification upon proper lines. The act on Negotiable Instruments has been passed in nearly all the states; the Warehouse Receipt Act, the Sales Act, Bills of Lading Act and the Stock Transfer Act have been passed in many states.In Louisiana, the civil law prevails and there are complete codes framed thereunder. One feature of the Louisiana code should be carefully noted. Art. 21 declares that "in all civil matters where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably an appeal is to be made to natural law and reason, or received usages...]


BOUVIER'S

LAW DICTIONARY

AND

CONCISE ENCYCLOPEDIA

BY JOHN BOUVIER

Ignoratis terminis ignoratur et ars.—Co. Litt. 2a

Je sais que chaque science et chaque art a ses termes propres, inconnus au commun des hommes.—Fleury

THIRD REVISION

(BEING THE EIGHTH EDITION)

BY FRANCIS RAWLE

OF THE PHILADELPHIA BAR

VOLUME I

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VERNON LAW BOOK COMPANY

ST. PAUL, MINN.
WEST PUBLISHING COMPANY

1914

https://archive.org/details/cu31924022836229

James Mill

The essays were written for the Supplement of the Encyclopaedia Britannica and appeared in the years 1816-1823, first published together in 1825.

ESSAYS ON GOVERNMENT, JURISPRUDENCE, LIBERTY OF THE PRESS, AND LAW OF NATIONS

James Mill-Scottish Political Philosopher

The definition of rights constitutes that part of law which has been generally denominated the Civil Code. The definition of offences and punishments constitutes that other part of law which has been generally denominated the criminal or Penal Code.
When rights are distributed, and the acts by which they may be violated are forbidden, an agency is required, by which that distribution may be maintained, and the violators of it punished. That agency is denominated judicature. The powers, by which that agency is constituted, require to be accurately defined; and the mode in which the agency itself is to be carried on must be fixed and pointed out by clear and determinate rules. These rules and definitions prescribe the form and practice of the courts, or mode in which the judicial functions are performed; and constitute that branch of law which has been called the Code of Procedure.

nated punishment. The definition, therefore, of offences, or of the acts by which rights are violated and which it is expedient to punish; and the definition of the penalties by which they are prevented, are equally necessary with the definition of rights themselves. The reasons which demonstrate this necessity are so nearly the same with those which demonstrate the necessity of the definition of rights, that we deem it superfluous to repeat them.

The definition of rights constitutes that part of law which has been generally denominated the *Civil Code.* The definition of offences and punishments constitutes that other part of law which has been generally denominated the criminal or *Penal Code.*

When rights are distributed, and the acts by which they may be violated are forbidden, an agency is required, by which that distribution may be maintained, and the violators of it punished. That agency is denominated judicature. The powers, by which that agency is constituted, require to be accurately defined; and the mode in which the agency itself is to be carried on must be fixed and pointed out by clear and determinate rules. These rules and definitions prescribe the form and practice of the courts, or mode in which the judicial functions are performed; and constitute that branch of law which has been called the *Code of Procedure.*

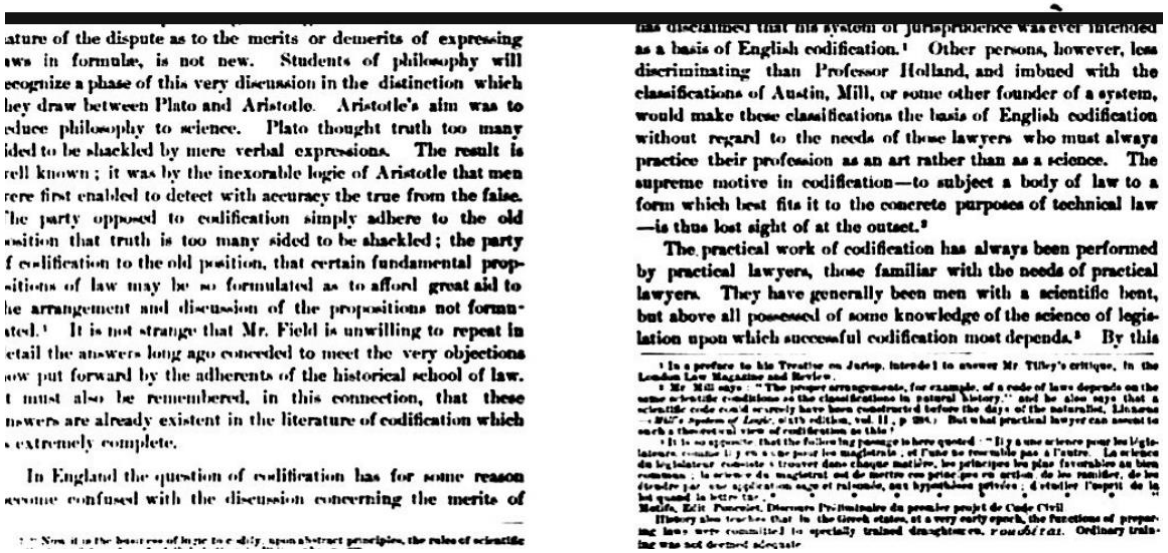
These three codes, the civil code, the penal code, and code of procedure, form together the whole subject of jurisprudence. Of the three, it sufficiently appears, that the last exists only for the sake of the other two. Courts and their operations are provided that the provisions of the civil and penal codes may not be without their effect. It is to be considered, therefore, as subordinate, and merely instrumental, in respect to the other two. They form the main body of the law; this is an accessary to the main body, though an accessary of indispensable use. It would be of great advantage to affix characteristic names to distinguish from one another the main and accessary parts of law. Unexceptionable

Outlines of cosmic philosophy

is extremely complete.

In England the question of codification has for some reason become confused with the discussion concerning the merits of

1 "Now it is the business of logic to codify, upon abstract principles, the rules of scientific investigations." * * *—1 Fiske's Cosmic Philosophy, p. 239.



ature of the dispute as to the merits or demerits of expressing ws in formulæ, is not new. Students of philosophy will ecognize a phase of this very discussion in the distinction which hey draw between Plato and Aristotle. Aristotle's aim was to educe philosophy to science. Plato thought truth too many ided to be shackled by mere verbal expressions. The result is ell known; it was by the inexorable logic of Aristotle that men ere first enabled to detect with accuracy the true from the false. he party opposed to codification simply adhere to the old osition that truth is too many sided to be shackled; the party f codification to the old position, that certain fundamental propositions of law may be so formulated as to afford great aid to he arrangement and discussion of the propositions not formulated.[1] It is not strange that Mr. Field is unwilling to repeat in etail the answers long ago conceded to meet the very objections ow put forward by the adherents of the historical school of law. t must also be remembered, in this connection, that these nswers are already existent in the literature of codification which extremely complete.

In England the question of codification has for some reason ecome confused with the discussion concerning the merits of

as disclaimed that his system of jurisprudence was ever intended as a basis of English codification.[1] Other persons, however, less discriminating than Professor Holland, and imbued with the classifications of Austin, Mill, or some other founder of a system, would make these classifications the basis of English codification without regard to the needs of those lawyers who must always practice their profession as an art rather than as a science. The supreme motive in codification—to subject a body of law to a form which best fits it to the concrete purposes of technical law—is thus lost sight of at the outset.[2]

The practical work of codification has always been performed by practical lawyers, those familiar with the needs of practical lawyers. They have generally been men with a scientific bent, but above all possessed of some knowledge of the science of legislation upon which successful codification most depends.[3] By this

Pg. 78 Now it is the business of logic to codify, upon abstract principles, the rules of scientific investigation ; to determine what shall be admitted as trustworthy evidence, and what shall not be so admitted ; to point out the class of problems which each implement of research is best fitted to solve--Since the era of Bacon and Descartes, no book had appeared containing such profound views of scientific method as the " Philosophic Positive." Pg. 79 It has since been surpassed and superseded in many respects by Mr. Mill's " System of Logic …]

Very quickly, the most famous admirers of the early *Course of Positive Philosophy* (1830–1842), such as Mill and Littré, disavowed the author of the later *System of Positive Polity* (1851–1854), thereby giving substance to the idea that there is a good and a bad Comte. https://plato.stanford.edu/entries/comte/

thinks it necessary to master the general theory of evidence as presented in special treatises. Logic is to the philosopher and the scientific inquirer what the law of evidence is to the lawyer ; and the need for its theoretical study rests upon the admitted principle that, in all branches of human activity, rational knowledge is better than empirical knowledge. In order to be always sure that we are generalizing correctly, we must make the generalizing process itself a subject of generalization.

But although Comte did not dignify logic with the rank of an independent science, he more than atoned for the omission by his contributions to the study of logic. Since the era of Bacon and Descartes, no book had appeared containing such profound views of scientific method as the " Philosophie Positive." It has since been surpassed and superseded in many respects by Mr. Mill's " System of Logic ; " but Mr. Mill would be the first to admit that, but for the work of Comte, his own work would have been by no means what it is.[1]

Comte's most important innovation consisted in comprehensively assigning to each class of phenomena its appropriate method of investigation, and in clearly marking out the limits within which each method is applicable. It is

1 This is perhaps too strongly stated. See Mill's *Autobiography*, pp. 207–213, 245.

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https://archive.org/details/outlinescosmicp00roycgoog/page/n92/mode/2up?q=codify

2. Alliance with Bentham

Sometime in 1808 James Mill met Jeremy Bentham (Bain 1882, 72) with whom he soon formed a political and philosophical alliance. The two were in some respects kindred spirits. Both wished and worked for religious toleration and legal reform; both favored freedom of speech and press; both feared that the failure to reform the British political system—by, among other things, eliminating rotten boroughs and extending the franchise—would give rise to reactionary intransigence on the one hand, and revolutionary excess on the other. But the two men were of vastly different temperaments and backgrounds. Bentham, a wealthy bachelor, was an eccentric genius and closet philosopher. The poor, harried and hard-working Mill was the more practical and worldly partner in that peculiar partnership. He was also a much clearer writer and more persuasive propagandist for the Utilitarian cause.

Bentham believed that the pursuit of pleasure and the avoidance of pain were the twin aims of all human action. His philosophy, Utilitarianism, held that self-interest—understood as pleasure or happiness—should be "maximized" and pain "minimized" (Bentham, incidentally, coined both terms). And, as with individual self-interest, so too with the public interest. According to Bentham, the aim of legislation and public policy was to promote "the greatest happiness of the greatest number." Mill agreed, after a fashion.

https://plato.stanford.edu/entries/james-mill/#AllBen

From May 1820 until July 1821, Mill was in France with the family of Sir Samuel Bentham, brother of Jeremy Bentham, the English utilitarian philosopher, economist, and theoretical jurist. Copious extracts from a diary kept at this time show how methodically he read and wrote, studied chemistry and botany, tackled advanced mathematical problems, and made notes on the scenery and the people and customs of the country. He also gained a thorough acquaintance with the French language. On his return in 1821 he added to his work the study of psychology and of Roman law, which he read with John Austin, his father having half decided on the bar as the best profession open to him. This intention, however, was abandoned, and in 1823, when he had just completed his 17th year, he entered the examiner's office of the India House. After a short probation he was promoted in 1828 to assistant examiner. For 20 years, from 1836 (when his father died) to 1856, Mill had charge of the British East India Company's relations with the Indian states, and in 1856 he became chief of the examiner's office.

https://www.britannica.com/biography/John-Stuart-Mill

plato.stanford.edu

Entry Navigation

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Formerly a dour Scots Presbyterian and still

Jeremy Bentham

Bentham and the Codifiers

" Legislators, who, having freed themselves from the shackles of authority, have learned to soar above the mists of prejudice, know as well how to make laws for one country as for another," — though he admits they required some data as to the circumstances of those for whom they deal. Montesquieu had expressed the opposite belief, saying " that it is very improbable that the laws of one nation can ever be suited to the wants of another nation ; " but Bentham contended that for drafting codes foreigners were preferable as more unprejudiced. Of this sort of universal philosophical codification for which Bentham labored so long and corresponded so widely, the Hon. Lord McLaren has lately very justly said, " This type of code need not be further considered. No state which has grown up under a reasonably good legal system would agree to abandon its native institutions and accept a system of laws devised by philosophers ; " and again, " A philosophical code may, like a new constitution, be made in the time spent in writing it----. So he addressed Alexander I., the Emperor of all the Russias, the people of Spain, Simon Snyder, Governor of Pennsylvania, his fellow-citizens of France, " James Madison, then President of the Congress of the American United States," Mehemet Ali, Albert Gallatin, Prince Adam Czartoriski of Poland, and in a circular communication, " the respective governors of the American United States," and in a series of letters, " The Citizens of the several American United States," He even proposed that, as we were not the only United States of America, and as the name " The Anglo-American United States " was a circumlocution, we should rename our country " Washingtonia," and advised us to " shut our ports against the common law as " we " would against the plague." ^ Sir Henry Maine has since taught that many of the earliest ideas of man are reflected in ancient [Roman] law, and that from their study can be traced " the steady progress of mankind from an age of formalities and ceremonies to an era of simplicity and symmetrical development." The fact that human laws and morals are as much the result of a " steady progress " of development as human bodies was not dreamt of in Bentham's philosophy, and this seems its capital defect. He regarded right and justice as abstractions having their unchangin g form as much as mineral crystals, the same for all times and all men, and that laws should be shaped accordingly. And yet, in rather an amusing way, his offers to amend the law of other nations were largely. attacks upon and campaigns against the defects of the law in his own country.-

https://archive.org/details/benthamcodifiers00gregiala/page/4/mode/2up

The works of Jeremy Bentham T. 9

Note By The Editor (Digital Pg.4)

[...It has frequently been urged as an objection against the adoption of any code of laws, that, inasmuch as every possible case cannot be provided for, the code itself will soon be swallowed up by commentaries and reported cases: and the Code Civil of France, with its multifarious commentaries, is quoted in support of the objection. By a very simple contrivance Mr Bentham has entirely obviated this difficulty. As often as any article of the Code shall appear not to be sufficiently comprehensive, or explicit, the Judge will propose an amendment in terms, which will afterwards become law, and so be incorporated in the Code, or not, according to the will of the Legislature.* By this means, the rule of action will be preserved from being enveloped in that inextricable confusion, and consequent doubt, which renders a knowledge of it, in this country, scarcely attainable, even to those who devote their whole lives to its study..]

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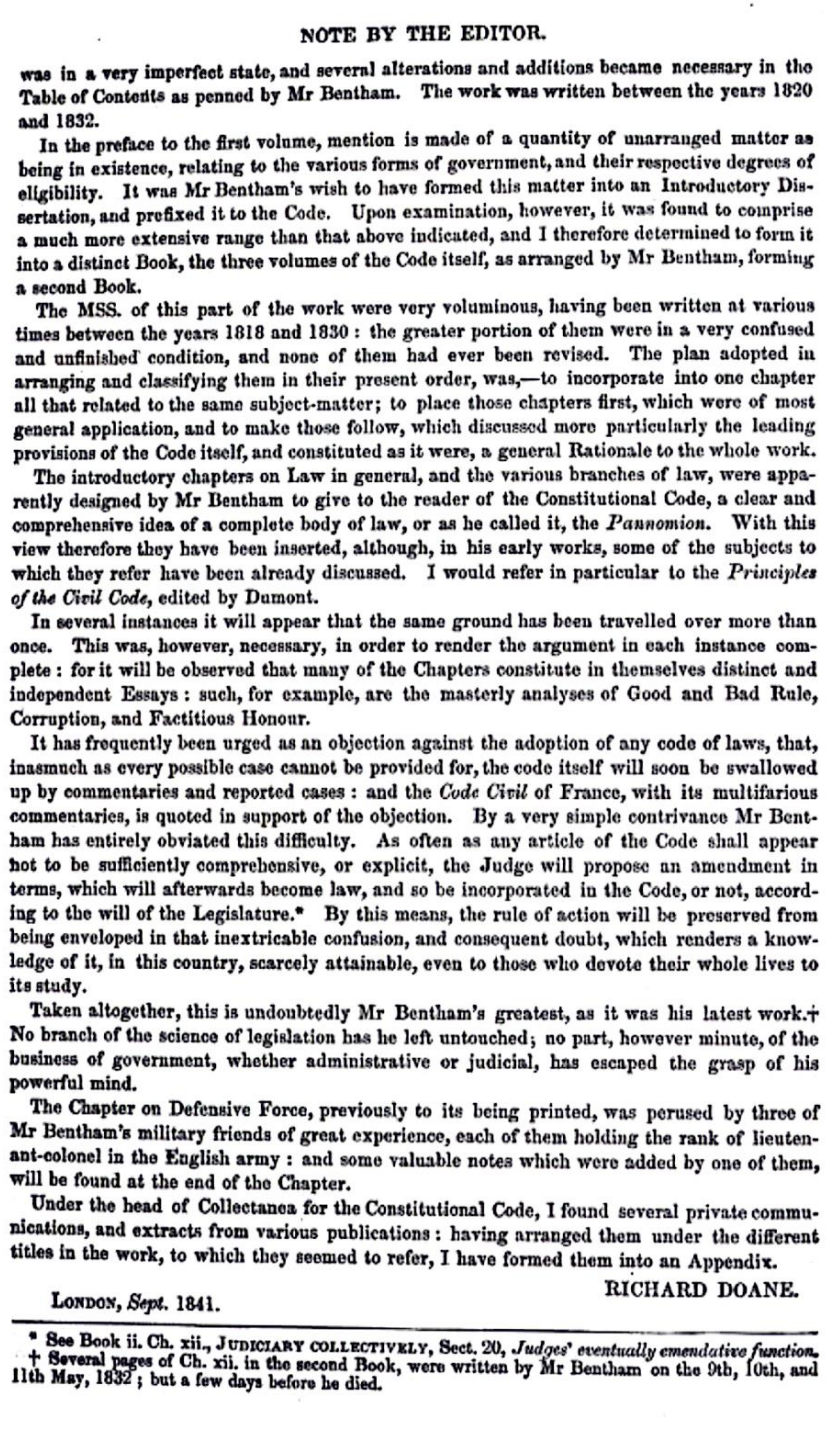

NOTE BY THE EDITOR.

was in a very imperfect state, and several alterations and additions became necessary in the Table of Contents as penned by Mr Bentham. The work was written between the years 1820 and 1832.

In the preface to the first volume, mention is made of a quantity of unarranged matter as being in existence, relating to the various forms of government, and their respective degrees of eligibility. It was Mr Bentham's wish to have formed this matter into an Introductory Dissertation, and prefixed it to the Code. Upon examination, however, it was found to comprise a much more extensive range than that above indicated, and I therefore determined to form it into a distinct Book, the three volumes of the Code itself, as arranged by Mr Bentham, forming a second Book.

The MSS. of this part of the work were very voluminous, having been written at various times between the years 1818 and 1830: the greater portion of them were in a very confused and unfinished condition, and none of them had ever been revised. The plan adopted in arranging and classifying them in their present order, was,—to incorporate into one chapter all that related to the same subject-matter; to place those chapters first, which were of most general application, and to make those follow, which discussed more particularly the leading provisions of the Code itself, and constituted as it were, a general Rationale to the whole work.

The introductory chapters on Law in general, and the various branches of law, were apparently designed by Mr Bentham to give to the reader of the Constitutional Code, a clear and comprehensive idea of a complete body of law, or as he called it, the *Pannomion*. With this view therefore they have been inserted, although, in his early works, some of the subjects to which they refer have been already discussed. I would refer in particular to the *Principles of the Civil Code*, edited by Dumont.

In several instances it will appear that the same ground has been travelled over more than once. This was, however, necessary, in order to render the argument in each instance complete: for it will be observed that many of the Chapters constitute in themselves distinct and independent Essays: such, for example, are the masterly analyses of Good and Bad Rule, Corruption, and Factitious Honour.

It has frequently been urged as an objection against the adoption of any code of laws, that, inasmuch as every possible case cannot be provided for, the code itself will soon be swallowed up by commentaries and reported cases: and the *Code Civil* of France, with its multifarious commentaries, is quoted in support of the objection. By a very simple contrivance Mr Bentham has entirely obviated this difficulty. As often as any article of the Code shall appear not to be sufficiently comprehensive, or explicit, the Judge will propose an amendment in terms, which will afterwards become law, and so be incorporated in the Code, or not, according to the will of the Legislature.* By this means, the rule of action will be preserved from being enveloped in that inextricable confusion, and consequent doubt, which renders a knowledge of it, in this country, scarcely attainable, even to those who devote their whole lives to its study.

Taken altogether, this is undoubtedly Mr Bentham's greatest, as it was his latest work.† No branch of the science of legislation has he left untouched; no part, however minute, of the business of government, whether administrative or judicial, has escaped the grasp of his powerful mind.

The Chapter on Defensive Force, previously to its being printed, was perused by three of Mr Bentham's military friends of great experience, each of them holding the rank of lieutenant-colonel in the English army: and some valuable notes which were added by one of them, will be found at the end of the Chapter.

Under the head of Collectanea for the Constitutional Code, I found several private communications, and extracts from various publications: having arranged them under the different titles in the work, to which they seemed to refer, I have formed them into an Appendix.

RICHARD DOANE.

LONDON, *Sept.* 1841.

* See Book ii. Ch. xii., JUDICIARY COLLECTIVELY, Sect. 20, *Judges' eventually emendative function.*

† Several pages of Ch. xii. in the second Book, were written by Mr Bentham on the 9th, 10th, and 11th May, 1832; but a few days before he died.

Joseph Story and Codification

The strength of the pre-Civil War codifications movement has been largely forgotten today. No doubt most qualified observers of the period would have predicted an early and complete codification of American law along the lines proposed by David Dudley Field in the codes which he prepared for enactment in New York. After the narrow defeat of the Field codes in New York,[9] the movement seems to have run out of steam, and little or nothing was heard about codification until the end of the century, with the series of uniform acts in the commercial field which were drafted under the auspices of the National Conference of Commissioners on Uniform State Laws.[10]

The early codification movement in the United States depended not at all on the jurisprudential enthusiasms of Jeremy Bentham. On the contrary, it was as American as apple pie. It may be, indeed, that we should speak not of one movement but of several movements. There were those who, hating everything English, saw the common law of England as an incubus with which our former imperial masters had managed to saddle us before ignominiously departing. An American codification was the obvious solution to the problem of how best to cut

racy of the 1830s.

There were, finally, members of the legal establishment, such as Story, who saw codification as an inevitable necessity if we were to escape from being buried under the accumulating mass of thousands and tens of thousands of case reports. Not only did the sheer bulk of the reports make it impossible for any lawyer to keep up with them; even worse was the specter of a state-by-state fragmentation of the substantive law which threatened as the country moved west and new court systems came in with the newly admitted states. From this point of view, codification seemed the best, and perhaps the only, way of keeping current developments in American law reasonably accessible to the harried practitioner as well as the best, and perhaps the only, way of avoiding fragmentation and of achieving at least a tolerable degree of national uniformity in the substantive law.

I think, be fair to add that Story, more than any other man, laid the foundation for the type of limited, pragmatic codification on the American plan which we eventually—after 1900—achieved.

Story had as early as 1821 called for a general codification as "the

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11 This aspect of the early codification movement was brilliantly discussed by the late Perry Miller. P. MILLER, THE LIFE OF THE MIND IN AMERICA (1965).

12 Mr. Dunne quotes a letter from Story to John Williams, written in 1836, in which Story remarks: "We have not yet become votaries of Jeremy Bentham." P. 317. The letter discussed Story's work on the Massachusetts codification commission referred to below.

13 P. 318.

one adequate remedy" which might avert "the fearful calamity, which threatens us, of being buried alive, not in the catacombs, but in the labyrinths of the law."[14] "A gradual digest, under legislative authority, of those portions of our jurisprudence, which, under the forming hand of the judiciary, shall from time to time acquire scientific accuracy," might, he suggested, "pave the way to a general code, which will present, in its positive and authoritative text, the most material rules to guide the lawyer, the statesman, and the private citizen."[15] Such a code, he pointed out, would require periodic revisions "to reflect all the light which intermediate decisions may have thrown upon our jurisprudence. To attempt more than this," he concluded, drawing the line between his

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=3717&context=uclrev

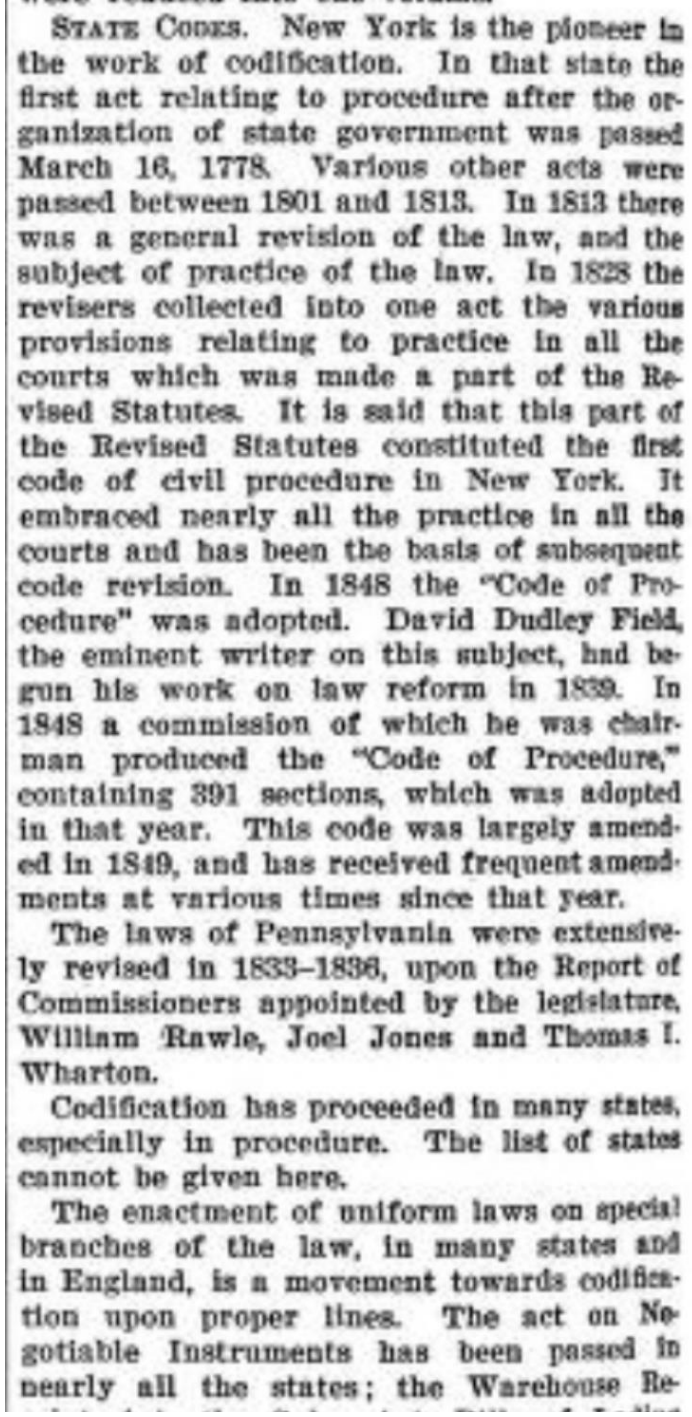
Chancery, New York

Chancery courts were also controversial because governors sought in their capacity as chancellors to seek political ends rather than justice. The English courts of Chancery which by the seventeenth century had become as complex as the common law courts, were not easily transferred to the colonies. Massachusetts and Pennsylvania rejected them outright; https://archive.org/details/magicmirrorlawin0000hall

[... as the English tightened control over the colonies in the eighteenth century, governors discovered that by assuming the status of chancellors they could extend the reach of their authority. [1729] In New York, for example, Governor William Burnet established himself as chancellor and proceeded to collect feudal dues owed in the form of quit rents in the Hudson River Valley. (Tenants paid a fee to quit, to be free of personal service or other obligations to a lord.) Burnet's successor went so far as to use his position as chancellor to question the validity of one of the colonies most extensive land patents.

https://archive.org/details/magicmirrorlawin0000hall/page/n4/mode/1up

Burnet was an excellent but undisciplined scholar. He entered Oxford at the age of 13, but was dismissed for disciplinary reasons. His later education came from private tutoring (including Isaac Newton as a tutor), and he was ultimately admitted to the bar.



STATE CODES. New York is the pioneer in the work of codification. In that state the first act relating to procedure after the organization of state government was passed March 16, 1778. Various other acts were passed between 1801 and 1813. In 1813 there was a general revision of the law, and the subject of practice of the law. In 1828 the revisers collected into one act the various provisions relating to practice in all the courts which was made a part of the Revised Statutes. It is said that this part of the Revised Statutes constituted the first code of civil procedure in New York. It embraced nearly all the practice in all the courts and has been the basis of subsequent code revision. In 1848 the "Code of Procedure" was adopted. David Dudley Field, the eminent writer on this subject, had begun his work on law reform in 1839. In 1848 a commission of which he was chairman produced the "Code of Procedure," containing 391 sections, which was adopted in that year. This code was largely amended in 1849, and has received frequent amendments at various times since that year.

The laws of Pennsylvania were extensively revised in 1833–1836, upon the Report of Commissioners appointed by the legislature, William Rawle, Joel Jones and Thomas I. Wharton.

Codification has proceeded in many states, especially in procedure. The list of states cannot be given here.

The enactment of uniform laws on special branches of the law, in many states and in England, is a movement towards codification upon proper lines. The act on Negotiable Instruments has been passed in nearly all the states; the Warehouse Re-

There is no insurmountable difficulty in codifying private law, and by private law is meant that which Mr. Carter himself would seem to consider private law in a division of any body of law into public and private. It must be borne in mind that this division of law into, public and private, is purely scholastic or fanciful ; the Germans include in private law, the law of crimes, and to them public law means Staatsrecht, or constitutional law. Mr. Carter's ingenuous statement, that he is not aware that the distinction between public and private law has hitherto been dwelt upon in the discussion concerning codification, contains a singular admission. The one distinction never lost sight of in any systematic view, or arrangement, of a body of law is this very division into public and private law. It is the basis of Holland's great contribution to jurisprudence which though not entitled a work on codification is generally recognized as the ablest presentation of that view which would make rights, and not duties, the basis of a scientific codification. If we run the division line of law into public and private where Mr. Carter would place it, there is no more difficulty in codifying the law on the one side of the division than there would be in codifying the law on the other side

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[*] The Akkadians, or Accadians, occupied much the same relation to the Assyrians in literature, language and art that ancient Rome bears to the modern Romance nations. The record of decisions of the Akkadian judges seems to have been preserved upon clay rolls engraved with a style.

[1] Chap. 6, part 1, Wise's Outlines of Jurisp.

https://archive.org/details/codificationinst00fowliala/page/18/mode/2up?q=.&view=theater

Pg. 30-31

The merits of the Corpus Juris and its important relations to the Anglican common law were notably conceded by Dr. Duck in 1649, a concession subsequently assailed with great virulence. Sir William Jones, whose fame as a scholar increases daily, termed it " the source of all our English laws that were not of feudal origin." Ample amends are now being made in England for past neglect. The late edition of Bracton's Commentaries published under the direction of the Master of the Kolls and edited by Sir Travers Twiss has enabled American lawyers to have easy access to a fundamental treatise of the common law, but the common law identical with the Roman law...] [...If any lesson whatever is to be drawn by us in New York from the consolidation of the Roman law under Justinian, it is, as Mr. Field has asserted, favorable to a codification of the law of New York.

Pg. 32

Codification in France, while accomplished under the First Napoleon, had been mooted at intervals from the reign of Louis XI. At the time it was adopted the measure had long had the sanction of French jurists and statesmen, owing to the fact that in France prior to 1789 there was such an immense number of separate systems of jurisprudence as to fairly justify Voltaire's mot, that a traveler in that country was compelled to change laws as often as he changed horses. This fact, as well as the careful and scientific mode in which Napoleon caused the commission, appointed for the purpose, to investigate the entire subject of codification, …][... The assertion that the French codes were imperialistic in design, tendency and character was long ago made …]

Pg. 36

The extraordinary confusion of the law of Prussia in Frederick the Great's day — for until 1848 a single commercial bill would sometimes fall under half-a-dozen rules of law within a comparatively small circuit — gave that philosophically inclined m6narch a sufficient motive for amending the form of the law.

CODIFICATION OF THE STATE OF NEW YORK

Pg. 43

[In the region of practical codification of the laws of England and her colonial offshoots, of all men past or present, stand preeminent, two American gentlemen, Field and Livingston, and entitled to be mentioned after them are Macaulay, who drafted the Indian Penal Code, Sir James Stephen, who drew the Indian Evidence Act, Sir John Romilly, Mr. Justice Willes, Sir Edward Ryan, and several others whose labors, in some form, have taken practical direction. In the latter list, no doubt, should be comprised Mr. Derbigny and Mr. Moreau Lislet of Louisiana, as well as Duer, Spencer, Butler and Wheaton, the draughtsmen of the New York Revised Statutes...]

[By a brief examination of extant codes we may perceive not only that the best pieces of modern codification have emanated from practical lawyers, but also that they have not been framed in strict accord with the notions of the speculative writers on codification.

The Civil Code of New York, like the Code Napoleon and the Code Frederic, follows the order of Justinian's Institutes and treats successively of the law of persons, of property and of obligations.

Amos' position, which entitles his censure to be regarded as final by Americans; a voluminous and highly respectable, though not very original,[1] writer, he is but a faint reflection of the masters of jurisprudence whose names have been mentioned. Professor Amos has published, among other things, his own scheme for a code which, though curious as a professorial emanation only—the professorial bent being usually didactic rather than constructive—is not remarkable.[2] In the region of practical codification of the laws of England and her colonial offshoots, of all men past or present, stand preëminent, two American gentlemen, Field and Livingston,[3] and entitled to be mentioned after them are Macaulay, who drafted the Indian Penal Code, Sir James Stephen, who drew the Indian Evidence Act, Sir John Romilly, Mr. Justice Willes, Sir Edward Ryan, and several others whose labors, in some form, have taken practical direction. In the latter list, no doubt, should be comprised Mr. Derbigny and Mr. Moreau Lislet of Louisiana, as well as Duer, Spencer, Butler and Wheaton, the draughtsmen of the New York Revised Statutes, one of the best and most influential pieces of legislation extant, whether we have regard to the reforms it instituted in the common law of real property, or to the general character of the revision.

By a brief examination of extant codes we may perceive not only that the best pieces of modern codification have emanated from practical lawyers, but also that they have not been framed in strict accord with the notions of the speculative writers on codification. The Civil Code of New York, like the Code Napoléon and the Code Frédéric, follows the order of Justinian's Institutes and treats successively of the law of persons, of property and of obligations. Now it is well known that the speculative writers do not approve of the arrangement of any of these codes, for they find in them a lack of logical principles of division, or classification. But the answer to this criticism is that the classes to

[1] The Athenæum, an English periodical, sums it all up in an equivocal but discriminating notice of Prof. Amos' work on the "Science of Politics," as follows: "Professor Amos has collected a great many observations and offered a great many opinions, some of which are original, and some of which are valuable." *v.* Fly leaf, Amos' Rom. Civ. Law.

[2] It must, however, be admitted that Professor Amos has the courage of his convictions and that he is in many departments a most pleasing and instructive writer on jurisprudence. It is fair to Professor Amos' qualification as a critic to add that he has lately, in answer to an inquiry of one of Mr. Field's opponents, expressed himself as having entirely changed his former opinion of Mr. Field's codes.

[3] Livingston and his colleagues are enumerated because their labors included a consideration of parts of the English common law.

https://archive.org/details/codificationinst00fowliala/page/42/mode/2up?q=mill&view=theater

Treaties, Vol. XIV, p. 303.

French Codes. The chief French codes of the present day are five in number, sometimes known as *Les Cinq Codes*. They were in great part the work of Napoleon, and the first in order bears his name. They are all frequently printed in one duodecimo volume. These codes do not embody the whole French law, but minor codes and a number of scattered statutes must also be resorted to upon special subjects.

Code Civil, or *Code Napoléon*, is composed of thirty-six laws, the first of which was passed in 1803 and the last in 1804, which united them all in one body, under the name of *Code Civil des Français*.

The first steps towards its preparation were taken in 1793, but it was not prepared till some years subsequently, and was finally thoroughly discussed in

Austrian. *The Civil Code* was promulgated July 7, 1810. The first part of it was published and submitted to the Universities and the courts of justice, and some parts having been found wholly unsuited to the purpose, were by his successor abrogated. It is founded in a great degree upon the Prussian. *The Penal Code* (1852) is said to adopt to some extent the characteristics of the French Penal Code.

The civil code originated in an ordinance issued by Maria Theresa in 1753, the avowed objects being to provide for uniformity of the law in the provinces and digest the existing law. The result was unsatisfactory and another commission authorized Counsellor Harten to construct a code, of which the conditions prescribed are quite worthy of repetition. They were: 1. To abstain from doctrinal development. 2. To have in view contestations of the most frequent occurrence. 3. To be clear in ex-

Code de Procédure Civil. That part of the code which regulates civil proceedings.

It is divided into two parts. Part First consists of five books: the first of which treats of justices of the peace; the second, of inferior tribunals; the third, of royal (or appellate) courts; the fourth, of extraordinary means of proceeding; the fifth, of the execution of judgments. Part Second is divided into three books, treating of various matters and proceedings special in their nature.

Code de Commerce. The code for the regulation of commerce.

This code was enacted in 1807. Book 1 is entitled, Of Commerce in General. Book 2, Maritime Commerce. The whole law of this subject is not embodied in this book. Book 3, Failures and Bankruptcy. This book was very largely amended by the law of 28th May, 1838. Book 4, Of Commercial Jurisdiction,—the organization, jurisdiction and proceedings of commercial tribunals. This code is, in one sense, a supplement to the *Code Napoléon*, applying the principle of the latter to the various subjects of commercial law. Sundry laws amending it have been enacted since 1807. Pardessus is one of the most able of its expositors. See Goirand, Code of Commerce.

Code d'Instruction Criminelle. The code regulating procedure in criminal cases, taking that phrase in a broad sense.

Book 1 treats of the police; Book 2, of the administration of criminal justice. It was enacted in 1808 to take effect with the Penal Code in 1811.

Code Pénal. The penal or criminal code.

Enacted in 1810. Book 1 treats of penalties in criminal and correctional cases, and their effects; Book 2, of crimes and misdemeanors, and their punishment; Book 3, offences against the police regulations, and their punishment. Important amendments of this code have been made by subsequent legislation.

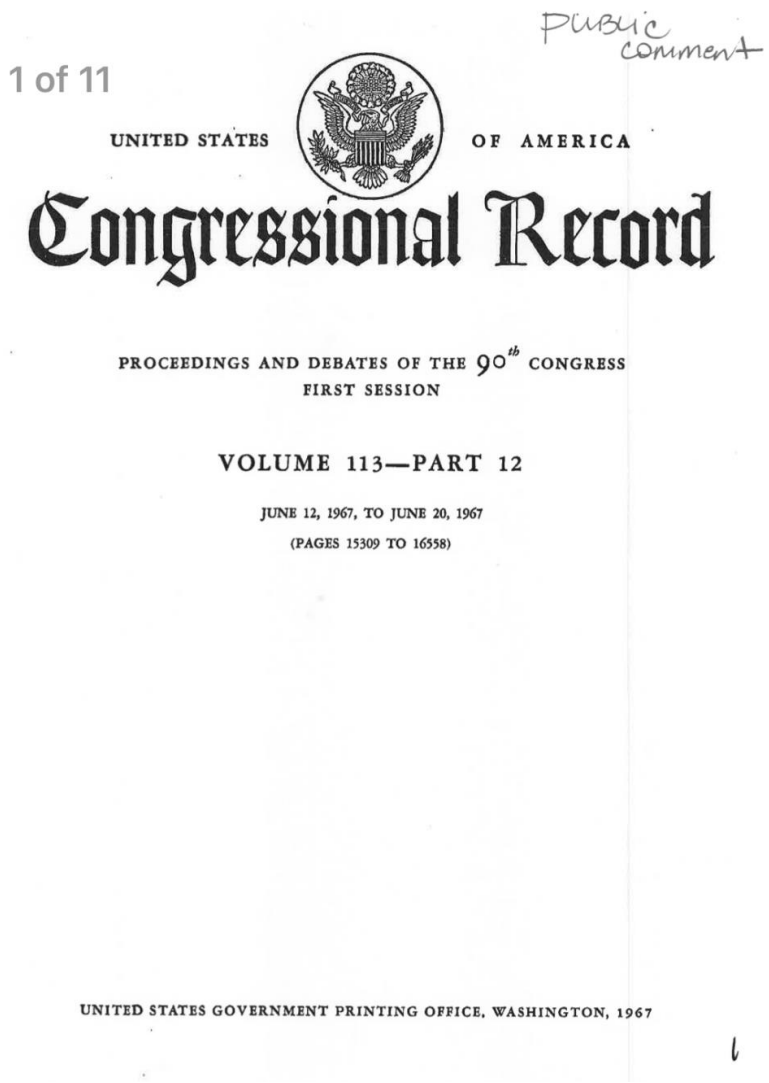
Code Militaire. The military code, substantive and procedural, for the army. Promulgated in 1857.

There is also a *Code Forestier;* and the

https://archive.org/details/7817906-bouvier-s-common-law-dictionary/page/280/mode/2up

The New Law Of The Land?

H. Con. Res.. 208
A concurrent resolution to expose the un-constitutionallty of the 14th admendment to the Constitution of the United States; to interpose tho sovereignty of the State of Loulslana against the execution of said amendment In this State; to memorialize the Congress of the United States to repeal the Joint resolution of July 28, 1888, declaring that said amendment had been ratified; and to provide for the distribution of certified copies of this resolution Whereas the purported 14th Amendment to the United States Constitution was never lawfully adopted….]


PUBLIC COMMENT
1 of 11
UNITED STATES OF AMERICA
Congressional Record
PROCEEDINGS AND DEBATES OF THE 90th CONGRESS
FIRST SESSION
VOLUME 113—PART 12
JUNE 12, 1967, TO JUNE 20, 1967
(PAGES 15309 TO 16558)
UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1967

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https://www.plumascounty.us/ArchiveCenter/ViewFile/Item/18119

Pg.510.

Act of Congress Declared to constitute The Law Of The Land

The Revision of Federal Statutes in 1873,
which went into effect June 22, 1874, was by act of congress declared to constitute the law of the land;
the pre-existing laws were thereby repealed, and ceased to be of effect.
By subsequent acts of congress, certain errors In this revision were corrected. A new edition of the Revision of 1873 was authorized by acts of March 2, 1877, and March 9, 1878; this is not a new enactment, but merely a new publication; it contains a copy of the Revision of 1873, with certain specific alterations and amendments made by subsequent enactments of the 43d and 44th congresses, incorporated according to the judgment and discretion of the editor, under the authority of the acts providing for his appointment. These alterations, or amendments, were merely indicated by italics and brackets. The act of March 9, 1878, provides that the edition of 1878 shall be legal evidence of the laws therein contained In all the courts of the United States, and of the several states and territories, "but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by congress since the first day of December, 1873."The supplement of 1881 is official to a limited extent. The provisions in regard to it are as follows: "The publication herein authorized shall be taken to be prima facie evidence of the laws therein contained in all the courts of the United States, and of the several states and territories therein; but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by congress: Provided, that nothing herein contained shall be construed to change or alter any existing law;" 21 Stat. L. 888. See Wright V. U. S., 15 Ct CI. 80, where the subject is explained by Richardson, J., one of the compilers. Volume I, Supplement to the Revised Statutes, contains all the permanent general laws enacted from the passage of the Revised Statutes in 1874, to and including the fifty-first congress, which expired in 1891, and supersedes Vol. I., prepared under resolution of June 7, 1880. The publication is prima facie evidence of the laws therein contained in all of the courts of the United States. Vol. II. of the Supplement contains the general laws of the fifty-second and subsequent congresses.The laws of the United States relating to the judiciary were enacted into the Judicial Code, March 3, 1911, and went into effect January 1, 1912; those relating to crimes were enacted into the Criminal Code, March 4, 1909, and went into effect January 1, 1910.

https://archive.org/details/cu31924022836229

French/Napoleonic/ Austrian/Prussian/ Civil Law/Code… From NY Straight to California /Idaho

David Dudley Field II (February 13, 1805 – April 13, 1894) was an American lawyer and law reformer who made major contributions to the development of American civil procedure.
His greatest accomplishment was engineering the move away from common law pleading towards code pleading, which culminated in the enactment of the **Field Code** in 1850 by the state of New York.

https://en.wikipedia.org/wiki/David_Dudley_Field_II

They claim it is the Fusion of Common Law and Chancery/Equity. But it is a slow encroachment/alteration/ and gradual replacement of the Common Law as the Fundamental Law/ Due Process/ Law of the Land

Pg. 6 [.. The New York civil justice system that Graham described followed the English model, In which separate courts of law and equity applied distinct procedures and remedies. The common law courts - which heard claims sounding in contract, tort, or property -used jury trial for fact-finding and awarded money damages for remedy. Common law pleading followed specific "forms of action"

Pg. 14 […The constitution of 1846 unified the New York court system. The chancery courts were abolished and their jurisdiction transferred to "one supreme court, having general jurisdiction…]

Both Loomis and Field recalled having influenced the new constitution. "If I was not permitted to influence the Convention by my voice within its walls," Field wrote, "I could influence it from without, and I did so to the utmost of my power, by conversation and correspondence with the members, and by articles in the newspapers."73 From January, 1846, through the end of the convention in the fall, Field published nearly twenty editorials in the New York Evening Post urging structural changes to the judiciary? Loomis was appointed to the Judiciary Committee, where he sought to exert "influence in favor of Law Reform in the protracted sessions and discussions." 75 The constitution was completed by November, and it made significant steps towards fusion

http://hdl.handle.net/20.500.13051/17833

[..David Dudley Field, the author of the New York Code, also undertook to codify the rules of international law...]

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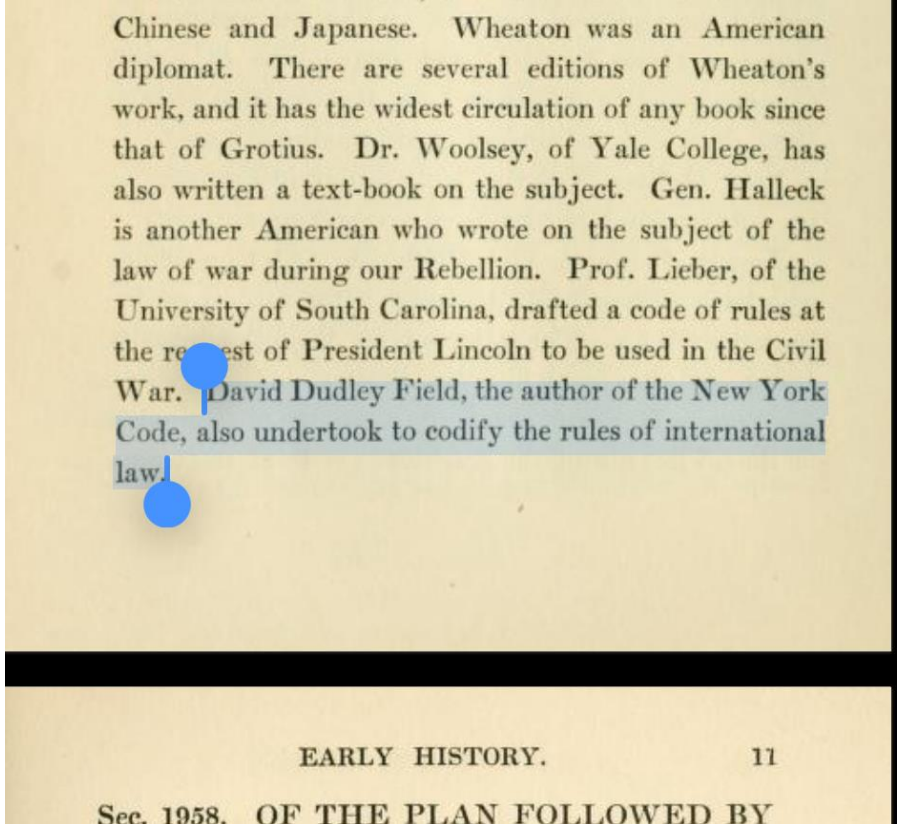


Chinese and Japanese. Wheaton was an American diplomat. There are several editions of Wheaton's work, and it has the widest circulation of any book since that of Grotius. Dr. Woolsey, of Yale College, has also written a text-book on the subject. Gen. Halleck is another American who wrote on the subject of the law of war during our Rebellion. Prof. Lieber, of the University of South Carolina, drafted a code of rules at the request of President Lincoln to be used in the Civil War. David Dudley Field, the author of the New York Code, also undertook to codify the rules of international law.

EARLY HISTORY. 11

Sec. 1958. OF THE PLAN FOLLOWED BY

David Dudley Field, of New York, and Lord Coleridge, the Chief Justice of England. In 1893, Mr. Field prepared, by request, a paper for the Columbian Exposition at Chicago, in which he said that codes of civil procedure, or what are such in substance, have been adopted "in twenty-eight American States and Territories-New York, Missouri, -Wisconsin, California, Kentucky, Ohio, Iowa, Kansas, Nevada, North Dakota, South Dakota, Oregon, Idaho, Montana, Minnesota, Nebraska, Arizona, Arkansas, North Carolina, South Carolina, Wyoming, Washington, Connecticut, Indiana, Colorado, Georgia, Utah, and Maine. The example was contagious, even so far as across the sea; and in 1873 the Parliament of England took up the subject, and adopted the Judicature Act, by which the forms of action were abolished and law and equity fused together . [not true, it started on that side of the pond] This act extended to Ireland, a has been followed in the English colonies of Victoria, Queensland,South Australia
Western Australia, Tasmania, New Zealand, Jamaica, St.Vincent, the Leeward Islands, British Honduras, Cambia, Grenada, Nova Scotia, Newfoundland, Ontario, and British Columbia." In 1883, Lord Coleridge, at the reception tendered him by the Bar Association of New York City, in replying to the address of welcome, took occasion to say: " You are probably aware that we in England...]
REFERENCE LOST

by rules of statement based upon the nature of rights and the logic of procedure. The true conception of pleading under the reformed system is, a brief and simple statement of operative facts, measured by the substantive law as to the *requisite* effect, and by the law of procedure as to the *actual* effect. The crowning excellence of the Reformed Procedure is, not that it has discarded forms and abolished fictions, not that it has condensed external methods into a single civil action, not that it has joined legal and equitable demands and defenses, but that it has, when rightly understood, brought pleading into harmony with the true nature and theory of legal right and obligation; it has made form subservient to substance, and has subordinated the statement to the thing stated. This distinguishing feature of Code Pleading, outlined in Part I., will be apparent in the study of its formal parts, its rules of statement, and the application of principles, hereinafter treated of.[1]

[1] This chapter is brief, because the subject will be elaborated throughout the remainder of the work. I will here venture to add, however, some words of commendation from two of the most distinguished jurists of these times—the late David Dudley Field, of New York, and Lord Coleridge, the Chief Justice of England. In 1893, Mr. Field prepared, by request, a paper for the Columbian Exposition at Chicago, in which he said that codes of civil procedure, or what are such in substance, have been adopted "in twenty-eight American States and Territories—New York, Missouri, Wisconsin, California, Kentucky, Ohio, Iowa, Kansas, Nevada, North Dakota, South Dakota, Oregon, Idaho, Montana, Minnesota, Nebraska, Arizona, Arkansas, North Carolina, South Carolina, Wyoming, Washington, Connecticut, Indiana, Colorado, Georgia, Utah, and Maine. The example was contagious, even so far as across the sea; and in 1873 the Parliament of England took up the subject, and adopted the Judicature Act, by which the forms of action were abolished and law and equity fused together. This act extended to Ireland, and has been followed in the English colonies of Victoria, Queensland, South Australia, Western Australia, Tasmania, New Zealand, Jamaica, St. Vincent, the Leeward Islands, British Honduras, Cambia, Grenada, Nova Scotia, Newfoundland, Ontario, and British Columbia."

In 1883, Lord Coleridge, at the reception tendered him by the Bar Association of New York City, in replying to the address of welcome, took occasion to say: "You are probably aware that we in England

Did we not see many men of fair learning and intelligence affirm **[Those Learned Men]** the contrary, we should say that all men believed it and all men knew it. This uncertainty comes in a great degree from the nature of the sources whence the law is derived; it is made by the judiciary **[Case-Law]** and not by the Legislature, made to fit particular cases, and not by general rules, and made always after the fact. It will not answer the objection to say that the Legislature makes bad laws sometimes. **[you just said the Legislature doesn't make laws?]** So does the judiciary.**[why is the judiciary making law? It is the duty of a judge to declare, not make law]** But the former need not make bad laws. If it be not able to make good ones for the future conduct of the citizen, leaving the judiciary to enforce them, still less is the judiciary able to make and enforce good laws for the past conduct of the citizen. We **[the BAR]** say a hundred times a day **[Hyperbole]** that we are governed by the common law. Where do we find this common law? The notion that it is found in usage or tradition we know in this young country to be untrue. Nothing here dwells in tradition, nothing in usage. The notion that common law is something floating in the atmosphere, visible only to the initiated, is one of those mythical phantasms which serve to amuse and deceive indolent credulity. Where, then, is this common law to be found? In the decisions of the judges ,and there only. What judges? All the judges of the English-speaking peoples—American, English, Irish, Scotch, and the English provinces, all over the world—seventy or more distinct communities in all—with distinct judicial establishments. How many of these decisions are yearly made and reported? About sixteen thousand in this country alone

stitution of capable for incapable judges. By so much as a complete judge is a blessing, by so much is an incompetent one a scourge. The one is learned, courteous, patient, firm, quick to discern and prompt to decide; the other is ignorant, rude, impatient, infirm of purpose, dull, and dilatory. Both may be honest in the sense of intending no wrong, but the difference between them is, that one is in his right place, and the other is out of his place altogether.

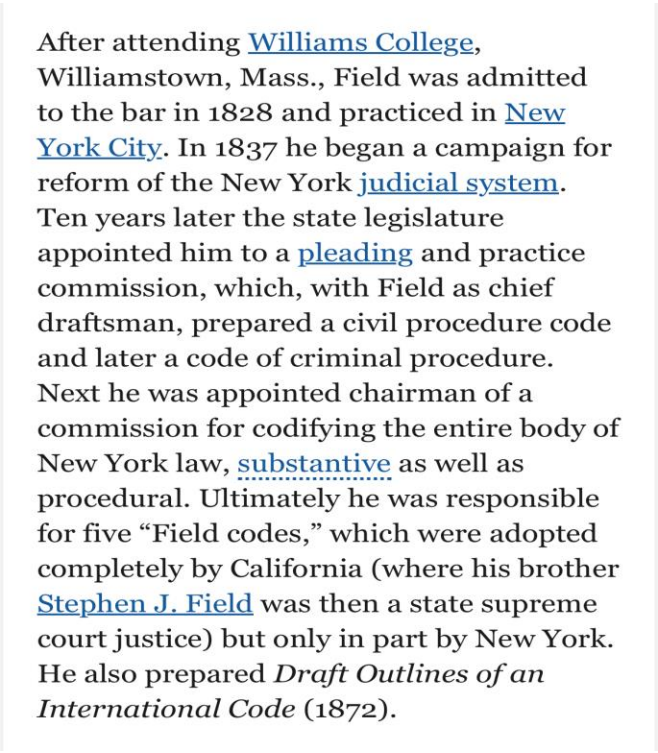
The only remaining element of certainty or uncertainty is the character of the law inself, as it is certain or uncertain. Now, the state of the law we pronounce to be one of the greatest uncertainty. Did we not see many men of fair learning and intelligence affirm the contrary, we should say that all men believed it and all men knew it. This uncertainty comes in a great degree from the nature of the sources whence the law is derived; it is made by the judiciary and not by the Legislature, made to fit particular cases, and not by general rules, and made always after the fact. It will not answer the objection to say that the Legislature makes bad laws sometimes. So does the judiciary. But the former need not make bad laws. If it be not able to make good ones for the future conduct of the citizen, leaving the judiciary to enforce them, still less is the judiciary able to make and enforce good laws for the past conduct of the citizen. We say a hundred times a day that we are governed by the common law. Where do we find this common law? The notion that it is found in usage or tradition we know in this young country to be untrue. Nothing here dwells in tradition, nothing in usage. The notion that common law is something floating in the atmosphere, visible only to the initiated, is one of those mythical phantasms which serve to amuse and deceive indolent credulity. Where, then, is this common law to be found? In the decisions of the judges, and there only. What judges? All the judges of the English-speaking peoples—American, English, Irish, Scotch, and the English provinces, all over the world—seventy or more distinct communities in all—with distinct judicial establishments. How many of these decisions are yearly made and reported? About sixteen thousand in this country alone. Are they announced in the form of legal propositions or pre-

https://archive.org/details/speechesargument0000unse/page/182/mode/2up?view=theater

In 1848, New York enacted a code of civil procedure that powerfully influenced the common law world. The Field Code, named after one of its drafters, David Dudley Field, systematized New York's procedural law and combined the previously separate systems of common law and equity. In the following decades, thirty other American states enacted versions of the Code, and English legal reformers studied New York's experience to inform their efforts at fusion. Although scholars agree on this general outline,[1] they differ regarding what the Code really accomplished. Writing in 1948,[2] Roscoe Pound argued that the characteristics of the modern Federal Rules of Civil Procedure "could have been attained at least eighty years [earlier] if Field's Code of Civil Procedure had been developed and applied in its spirit instead of the spirit of maintaining historical continuity."[3] Pound particularly praised the "equitable shortcuts" of the Code.[4] [1] See, e.g., Lawrence Friedman, A History of American Law 293-97 (3d. ed., 2005); Robert W. Millar, Civil Procedure of the Trial Court in Historical Perspective 54-55 (1952). [2] For the centennial of the Field Code, Professor Alison Reppy organized a conference on the Code at New York Law School. See David Dudley Field: Centenary Essays (Alison Reppy ed., 1949) [hereinafter Centenary Essays]. The presentations typically celebrated more than they clarified, however. The presenters frequently relied on Henry Martyn Field's biography of his brother, Henry Martyn Field, The Life of David Dudley Field (1898) [hereinafter Life of Field], and they occasionally retain Henry's extreme rhetoric. For instance, Reppy concluded that Field "believed that with righteousness on his side, he would gather strength as he fought the battle to cut a passage through the labyrinth of judicial myth and precept and 'cast up a highway that should lead straight to the Temple of Justice.'"...]

https://openyls.law.yale.edu/handle/20.500.13051/17833#:~:text=In%201848%2C%20New%20York%20enacted,of%20common%20law%20and%20equity

After attending Williams College, Williamstown, Mass., Field was admitted to the bar in 1828 and practiced in New York City. In 1837 he began a campaign for reform of the New York judicial system. Ten years later the state legislature appointed him to a pleading and practice commission, which, with Field as chief draftsman, prepared a civil procedure code and later a code of criminal procedure.



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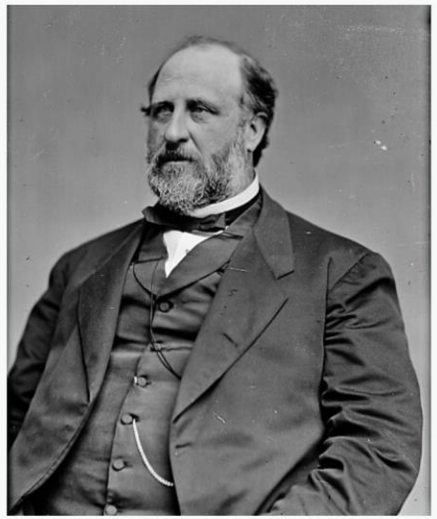
https://www.britannica.com/biography/David-Dudley-Field

AA en.m.wikipedia.org

William Magear "Boss" Tweed[note 1] (April 3, 1823 – April 12, 1878) was an American politician most notable for being the political boss of Tammany Hall, the Democratic Party's political machine that played a major role in the politics of 19th-century New York City and State.

William M. Tweed

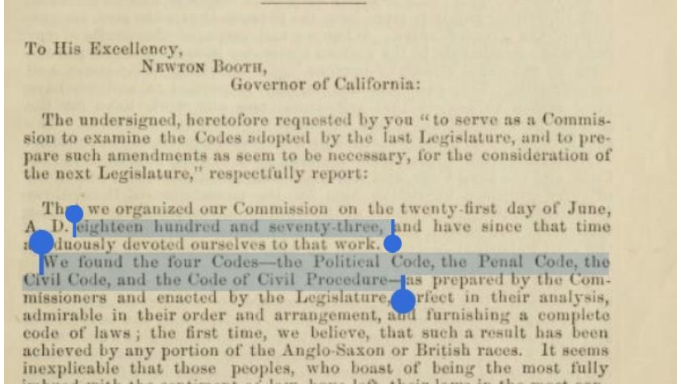


Tweed in 1870

As a practicing attorney, Field had some clients who led him into dubious actions. He was nearly disbarred for his activities on behalf of the financiers Jay Gould and James Fisk in their struggle with Cornelius Vanderbilt for control of the Erie Railroad (late 1860s). He also was counsel (1873–78) for the notorious New York City politician William Magear ("Boss") Tweed.

Boss Tweed was convicted for stealing an amount estimated by an aldermen's committee in 1877 at between $25 million and $45 million from New York City taxpayers by political corruption, but later estimates ranged as high as $200 million (equivalent to $5 billion in 2023)

https://www.britannica.com/biography/David-Dudley-Field

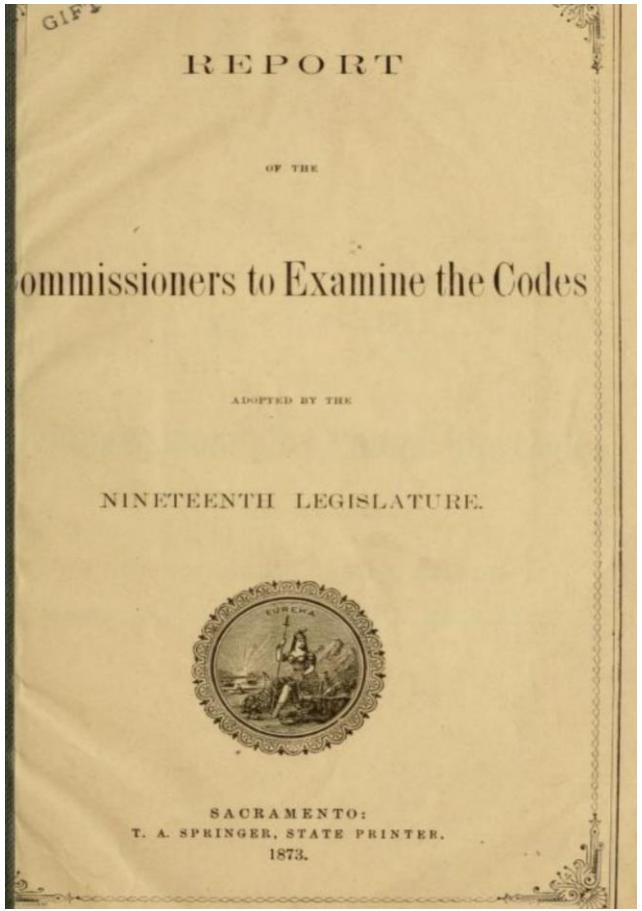


To His Excellency,
NEWTON BOOTH,
Governor of California:

The undersigned, heretofore requested by you "to serve as a Commission to examine the Codes adopted by the last Legislature, and to prepare such amendments as seem to be necessary, for the consideration of the next Legislature," respectfully report:

That we organized our Commission on the twenty-first day of June, A. D. eighteen hundred and seventy-three, and have since that time assiduously devoted ourselves to that work.

We found the four Codes—the Political Code, the Penal Code, the Civil Code, and the Code of Civil Procedure—as prepared by the Commissioners and enacted by the Legislature, perfect in their analysis, admirable in their order and arrangement, and furnishing a complete code of laws; the first time, we believe, that such a result has been achieved by any portion of the Anglo-Saxon or British races. It seems inexplicable that those peoples, who boast of being the most fully



REPORT

OF THE

Commissioners to Examine the Codes

ADOPTED BY THE

NINETEENTH LEGISLATURE.

SACRAMENTO:
T. A. SPRINGER, STATE PRINTER.
1873.

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We found the four Codes-the Political Code, the Penal Code, the Civil Code, and the Code of Civil Procedure-as prepared by the Commissioners and enacted by the Legislature admirable in their order and arrangement, an furnishing a complete code of laws; the first time, we believe, that such a result has been achieved by any portion of the Anglo-Saxon or British races. It seems inexplicable that those peoples, who boast of being the most fully imbued with the sentiment of law, have left their laws in the most confused condition, resting partly in tradition, but for the greater part scattered through thousands of volumes of books of statutes and reports, and thus practically inaccessible to the mass of the people.

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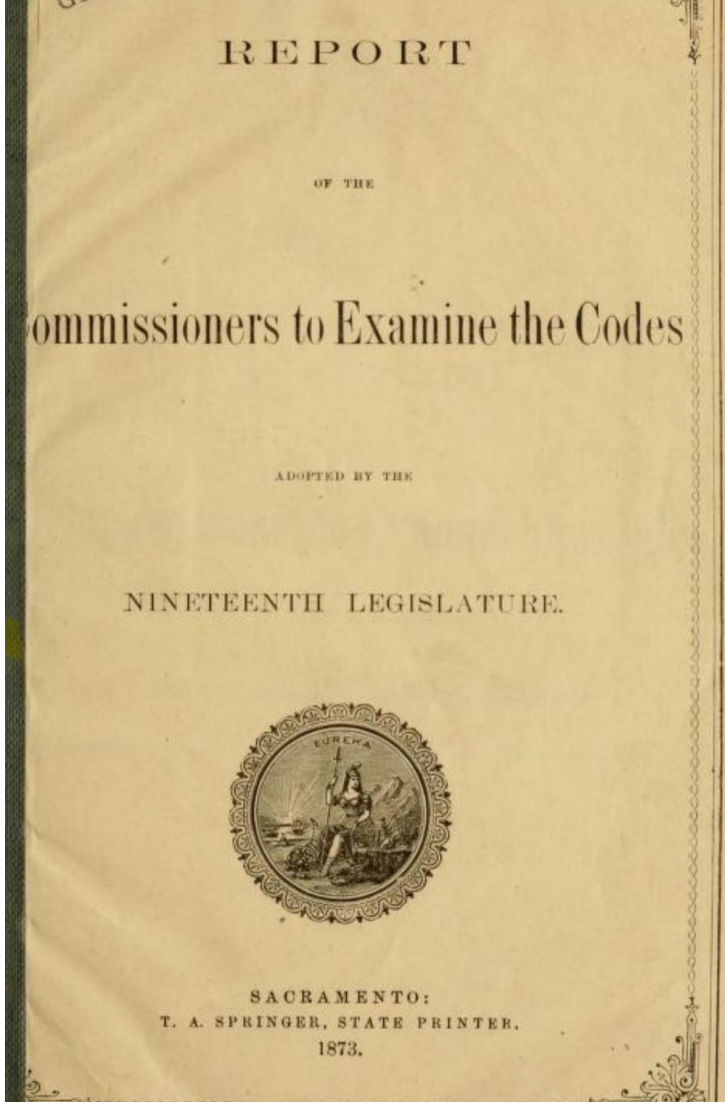
In the Code of Civil Procedure we have suggested several important amendments. One respecting the jurisdiction of the Courts, especially of the Supreme Court upon appeal, which, if adopted by the Legislature and approved by the Supreme Court, will, we think, give relief upon appeal in a large class of cases affecting property, where that remedy is not now allowed. We have endeavored to render the laws for selecting jurors more efficient, and to discard the rule which often disqualified the most intelligent persons drawn as jurors, because they had expressed an o])inion upon merely outside rumors. We have proposed to dispense with the verification of pleadings in those cases where, if required, there is always an oath on one side and an opposing oath on the other, leading to great corruption and demoralization. We have endeavored to simplify and expedite the procedure on moving for new trials; to dispense with special findings by the Courts in cases where they are not needed; to render the rules of evidence clearer and more precise; to purge definitions from all i-edundancy; to restore to the clauses regulating redemption from sales under judgment, some material provisions which had been left out by accident, and to remedy some defects in them which have only lately been discovered; and to make the provisions regulating actions against steamers and boats for the first time constitutional under the decisions of the Supreme Courts of California and of the United States.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T. A. SPRINGER, STATE PRINTER.
1873.

Railroad Lobby Money
finally paying off

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Setting The Stage For the "Code Commission" & Codification

"Since the adjournment of the last legislature, the laws enacted at that and the preceding session, have been printed, in separate volumes, each of which has been appropriately and conveniently indexed.

The publishing work has been well executed in good type and on good paper, with substantial binding, but for want of funds to pay for the work, the books still remain in the hands of the publisher at San Francisco. The embarrassment under which you must necessarily labor in not having these laws placed before you, is fully appreciated, as without them it is impossible that your present legislation can be performed understandingly or with as much satisfaction, either to yourselves or to your constituents, as could be done, could access be had to these bound volumes. In fact, the statutes of the Territory are in a very unsatisfactory condition.

"The First legislature which assembled at Lewiston in 1863, enacted a code, but as the duration of their session was limited, it was necessarily passed in much haste, and with much less consideration than its importance demanded. The code then enacted was not printed until after the sitting of the next legislature, and many of the amendments have never been published in any form whatever, and, indeed, each succeeding legislature has labored under the misfortune of endeavoring to amend the legislation of its predecessor with no authentic knowledge on the subject matter. The result is that our laws are inharmonious and abound in perplexing discrepancies. It is believed that the best method to secure a perfect code of laws and remedying the existing evils, is by the appointment of a commission to codify and revise the whole body of our statutes. The present uncertainty can thus be remedied by a system which, though it may take some time and incur some expense, will, when complete, supersede for years the necessity of further amendments and additional legislation.

"The financial affairs are far from being in a satisfactory condition, as may be seen by an examination of the reports of the Territorial Treasurer and Comptroller. The remedy suggested is in the most rigid economy and a thorough and stringent revenue law.

No one should desire to be permitted to live in a country where he can claim the protection and benefit of its laws, and at the same time refuse to be laid under contribution to sustain that country and support its lows. Since all good citizens willingly pay their taxes, it is but justice to them that all should be made to assist in the burden of taxation. Could all the taxes due from citizens

https://archive.org/details/historyofidaho00hail

be made, and necessary new ones enacted, it is equally important that the statutes should remain free from complications by amendment, at least long enough for the people to become familiar with them and their practical workings.

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Pre-Compiled before the Legislation even met

The history of Idaho : Hailey, John
Pg. 265

[…This session of the Legislature continued for sixty days, an act of Congress having extended the time from forty to sixty days. The Council organized on the first day, and the House on the second day.
They worked faithfully and passed some good laws.
Among these was a complete revision of our Code of Civil Procedure.

The work of compiling this Code was due almost wholly to the Hon. R. Z. Johnson and Judge John S. Gray. Mr. Johnson was a member of the Council,

and Mr. Gray a member of the House. They had done the greater portion of compiling these laws before the Legislature met, and the members had such confidence in their ability and integrity that their work of compilation was accepted and enacted into law by the Legislature with but very few amendments.]
https://archive.org/details/historyofidaho00hail

1864 Common law of England, as far as the same was applicable, was adopted as the law of Idaho, after which the statute law of California was enacted almost bodily.

https://archive.org/details/idahochronologyn00reesrich

1863 First political conventions in Idaho were held at Mount Idaho by the Republican party and at Idaho City by the Democratic party.

1863 Lloyd Magruder and party were murdered at Nez Perce Pass, Idaho, by road agents in the most dastardly and foul manner known in the mountains.

1863 First election in Idaho was held in which William H. Wallace, Republican, was elected delegate to the Thirty-eighth Congress.

1863 First session of the Territorial Legislature met at Lewiston on December 7th with twenty members.

1863 First law passed by the Legislature divided the Territory into three judicial districts: First, Nez Perce, Shoshone and Idaho counties, with Alex C. Smith, judge; Second, Boise County, with Samuel C. Parks, judge; Third, country east of the Rocky Mountains, with Sidney Edgerton, judge and chief justice.

1863 Fifth county created in Idaho was Owyhee, with Ruby City the county seat, including all country lying south of Snake River and west of the Rocky Mountains.

1864 Common law of England, as far as the same was applicable, was adopted as the law of Idaho, after which the statute law of California was enacted almost bodily.

1864 First court trial in Idaho was held at Lewiston on January 5th before Judge Samuel C. Parks in the case of the Magruder murderers.

1864 Sixth county created in Idaho was Oneida, with Soda Springs the county seat, including all lands east of a north and south line along the 113° longitude from Utah to Snake River.

1864 Seventh county created in Idaho was Alturas, with Esmeralda the county seat, including all lands north of Snake River from mouth of Bruneau to Lost River and as far north as the Sawtooth Mountains.

1864. Latoh County was created with Coeur d'Alene City the county seat, including all lands north of Nez Perce and Shoshone counties to 48°, but was not organized.

1864 Kootenai County was created, but not organized, with Sin-na-ac-qua-teen the county seat, including all Idaho north of 48°.

1864 Idaho territory east of the Bitterroot and Rocky Mountains was organized into ten counties, eight of which were afterwards in Montana and two in Wyoming.

1864 Idaho territory west of the Bitterroot and Rocky Mountains was reorganized into seven counties as already named, their boundaries being changed to conform to proper limits.

1864 Transportation and mail service by stage coaches was successfully inaugurated and Ben Holliday awarded the contract to carry a triweekly mail from Salt Lake via Fort Hall and Boise to Walla Walla.

1864 *Idaho Statesman*, a triweekly newspaper, owned and managed by J. S., R. W. and T. B. Reynolds, was established at Boise City.

The First step in abrogating the common law, is to pretend like you were vested in the authority to adopt it… then you can abrogate it.

with one or more sureties, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court.

SEC. 25. This act to take effect and be in force from and after the approval of the governor.

APPROVED February 18, 1864.

COMMON LAW.

AN ACT adopting the Common Law of England.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The common law of England so far as the same is not inconsistent with the provisions of the constitution and laws of the United States, the organic act and laws of this territory, be the law of the land in this territory.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 4, 1864.

COMPENSATION TO OFFICERS.

AN ACT to provide increased compensation to officers in this Territory.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The salaries of the following officers are hereby increased, in addition to the sums already provided by the United States government, as follows, viz: To the governor and justices of the supreme court, each, the sum of two thousand five hundred dollars; to the secretary of the territory, the sum of one thousand five hundred dollars.

SECTION 1. The Governor of the state of Idaho is here. by autherized and empowered to present to the state sen-ate, now in session, for its approval, the names of five per-sons, learned in the law aud members of the bar of the supreme court of this state, one of whom to be designated by the Governor, shall be chairman; such persons, upon being approved by said senate, shall be known as the code commission, and they shall be authorized to codify the laws, civil and criminal, and the law of civil procedure, and to revise, simplify, arrange, and consolidate the statutes of the state of Idaho, which shall be in force at the time such commission shall make its final report.

SEC. 2.

It shall be the duty of the commission to pre

pare the following codes, the political code, the civil code, the code of civil procedure and the penal code.

The political code shall treat of the sovereignty of the people of the state, of the political rights and duties, of the political divisions of the state, of the government of the counties, cities and towns and of such other general laws as shall seem proper to the commission.

The civil code shall consist of the body of the common law, with such statutory changes therein as have been enacted by the legislature of the territory, and of the state of Idaho, with such changes and amendments as it shall seem to the commission advisable.

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The civil code shall consist of the body of the common

Digitized

law, with such statutory changes therein as have been enacted by the legislature of the territory, and of the state of Idaho, with such changes and amendments as it shall seem to the commission advisable.

The code of civil procedure shall treat of the procedure

Boise and Owyhee; fourth district, Cassia, Elmore, Logan and Alturas; fifth district, Bear Lake, Bingham, Oneida, Lemhi and Custer.

Proposed amendment: An amendment to this section, proposed '07, p. 592, H. J. R. 3, and voted upon Nov. 3, 1908, '13, p. 668, by which each county was to be a judicial district, was declared to be no part of the constitution, on account of noncompliance with the requirements for amending. McBee v. Brady (1909) 15 I. 761, 100 P. 97.

Cross ref. The present districts are defined in §§ 55-65.

Cited: McBee v. Brady (1909) 15 I. 761, 100 P. 97; Knight v. Trigg (1909) 16 I. 256, 264, 100 P. 1060.

§ 25. Defects in laws to be reported by judges. The judges of the district courts shall, on or before the first day of July in each year, report in writing to the justices of the supreme court, such defects or omissions in the laws as their knowledge and experience may suggest, and the justices of the supreme court shall, on or before the first day of December of each year, report in writing to the governor, to be by him transmitted to the legislature, together with his message, such defects and omissions in the constitution and laws as they may find to exist.

§ 26. Court procedure to be general and uniform. All laws relating to courts shall be general and of uniform operation throughout the state, and the organized judicial powers, proceedings, and practices of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

Laws relating to courts: Laws '03, p. 223, providing for the appropriation, diversion and adjudication of the rights to the use of the waters of the state, and which contains certain peculiar provisions as to the duties of the state engineer, the apportionment of costs, the preparation and use of maps as evidence, etc., in proceedings for the adjudication of water rights, is not repugnant to this section. (Stockslager, J., dissents.) Boise Irr. etc. Co. v. Stewart (1904) 10 I. 38, 77 P. 25, 321.

Section 34, '03, p. 223, relative to the distribution of water and adjudication of water rights, which authorizes a suit for adjudication of water rights to be brought against "all claimants of a right to the use of the water" of the stream in question, without naming the defendants, or requiring any effort for personal service on such defendants as might be found, is repugnant to this section. Bear Lake Co. v. Budge (1904) 9 I. 703, 75 P. 614.

'03, § 35, which requires the costs and attorneys' fees in a suit to adjudicate the waters of a stream, to be paid by the county, is repugnant to this section. Ib.

'03, § 36, which provides that during the pendency of an action to adjudicate the waters of a stream, the use of the water shall be under the control of the water commissioner and that he shall be authorized to issue all needful rules for the distribution of the water to the defendants, is repugnant to this section. Ib.

§ 27. Change in compensation of officers. The legislature may by law diminish or increase the compensation of any or all of the following

Abrogating The Common Law

GENERAL LAWS

OF THE

TERRITORY OF IDAHO.

CODE OF CIVIL PROCEDURE.

AN ACT

TO ESTABLISH A CODE OF CIVIL PROCEDURE FOR IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

PRELIMINARY PROVISIONS.

SECTION 1. This act takes effect at twelve o'clock, noon, on the twenty-first day of May, eighteen hundred and eighty-one, and shall be known and may be cited as the Code of Civil Procedure. — When act takes effect.

SEC. 2. No part of it is retroactive, unless expressly so declared. — Not retroactive.

SEC. 3. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this Territory, respecting the subjects to which it relates, and its provisions and all proceedings under it, are to be liberally construed, with a view to effect its objects and to promote justice. — How construed.

SEC. 4. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. — Construed as continuations.

SEC. 5. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by — Actions, etc., not affected by this Code.

(1)

[..Sec. 3.

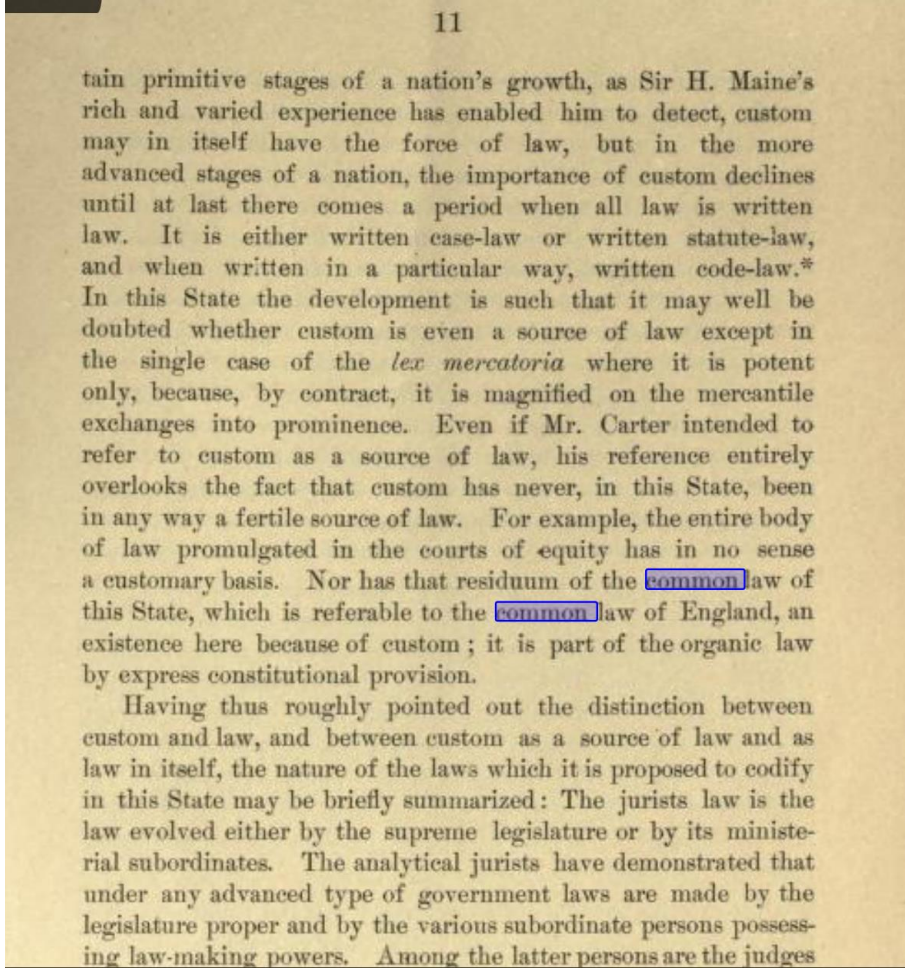
The [MAXIM] rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this Territory, respecting the subjects to which it relates, and its provisions and all proceedings under it, are to be liberally construed, with a view to effect its objects and to promote justice.

Sec. 4.

The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments...]

https://archive.org/details/lawsterritoryid01tergoog

[New York] [.. that residuum of the common law of this State, which is referable to the common law of England, an existence here because of custom ; it is part of the organic law by express constitutional provision.



11

tain primitive stages of a nation's growth, as Sir H. Maine's rich and varied experience has enabled him to detect, custom may in itself have the force of law, but in the more advanced stages of a nation, the importance of custom declines until at last there comes a period when all law is written law. It is either written case-law or written statute-law, and when written in a particular way, written code-law.* In this State the development is such that it may well be doubted whether custom is even a source of law except in the single case of the *lex mercatoria* where it is potent only, because, by contract, it is magnified on the mercantile exchanges into prominence. Even if Mr. Carter intended to refer to custom as a source of law, his reference entirely overlooks the fact that custom has never, in this State, been in any way a fertile source of law. For example, the entire body of law promulgated in the courts of equity has in no sense a customary basis. Nor has that residuum of the common law of this State, which is referable to the common law of England, an existence here because of custom ; it is part of the organic law by express constitutional provision.

Having thus roughly pointed out the distinction between custom and law, and between custom as a source of law and as law in itself, the nature of the laws which it is proposed to codify in this State may be briefly summarized: The jurists law is the law evolved either by the supreme legislature or by its ministerial subordinates. The analytical jurists have demonstrated that under any advanced type of government laws are made by the legislature proper and by the various subordinate persons possessing law-making powers. Among the latter persons are the judges

https://archive.org/details/codificationinst00fowliala

There was no "code commission" in 1899.

It was a "code commissioner "

would no longer contain all of the current statutes after the statutes that were repealed, amended, or enacted during the session took effect.

However, all other compilations of statutes, including the current Idaho Code, were merely declared to be evidence of the statutes of Idaho. In 1899, the legislature provided for the appointment of a code commission that was authorized to codify the laws and "to revise, simplify, arrange, and consolidate the Statutes of the State of Idaho, which shall be in force at the time such commission shall make its final report." Sec. 1, 1899 Idaho Sess. Laws 342, 342–43. In 1901, it provided for the appointment of another code commission to continue the work of the 1899 code commission by updating subsequent changes in the statutory law and providing annotations to the decisions of this Court. Secs. 1, 2, 1901 Idaho Sess. Laws 57, 57–58. The bill also provided that the codes printed and published pursuant to the act "shall be received in all courts in this State, *as prima facie evidence* of all the general laws of the State of Idaho existing and in operation at the date of their publication." Sec. 8, 1901 Idaho Sess. Laws 57, 59 (emphasis added). In 1919, the legislature authorized the clerk of the supreme court to update the 1919 code, and the legislature provided that such compilation "shall be received by all courts and judges thereof, and all public

COMPILED LAWS REVISION ACT.

['17, c. 78, p. 241.]

AN ACT

O PROVIDE FOR THE REVISION, COMPILATION AND CODIFICATION OF THE LAWS OF THE STATE OF IDAHO.

e It Enacted by the Legislature of the State of Idaho:

§ 1. Appointment of code commissioner. The supreme court of the tate of Idaho is hereby authorized and empowered to appoint some person, earned in the law and a member of the bar of the supreme court of this tate, who shall be known as a code commissioner.

Code commissioner's general duties. The code commissioner (and who) shall be authorized to revise, codify and compile the laws, civil, po- tical and criminal, and the laws of civil procedure, and to revise, arrange, implify and consolidate the statutes of Idaho which shall be in force at he time such commissioner shall make his final report; and to make such hanges, alterations, modifications, additions and substitutions as the said ommissioner may deem best to the end that a complete simplified code of aws based on the laws in force at the time the said commissioner shall ake his final report, shall be presented, but with errors, inconsistencies, epetitions and ambiguities therein eliminated.

Alternative procedure in lieu of appointment of commissioner. *Pro- ided*, That the supreme court may, in its discretion, in lieu of the ap- ointment of such code commissioner, arrange for the performance of the abor herein designated in the manner provided in section 12 hereof.

§ 2. Division into codes. It shall be the duty of the commissioner to repare the following codes: the Political Code, the Civil Code, the Code f Civil Procedure and the Penal Code.

The Political Code shall treat of the sovereignty of the people of the tate, of the political rights and duties, of the political divisions of the tate, of the government of the counties, cities, towns, and of such other eneral laws as shall seem proper to the commissioner.

The Civil Code shall treat of property and property rights, persons nd personal relations, corporations, contracts and obligations and other ubjects properly related to the foregoing.

The Code of Civil Procedure shall treat of the procedure and practice n civil actions and proceedings in all courts in the state, or in any ubdivision thereof.

The Penal Code shall treat of crimes and misdemeanors and the pun- shment thereof, of criminal procedure and penitentiaries, prisons and ails.

Commissioner's report. The commissioner shall also make and pre- are a report designating what statutes or parts of our statutes are omit- ed by him or repealed by the provisions of any other act reported by him nd what, if any, new sections he has added to such codes, and any laws f a general nature which ought to be enacted in addition to the codes re- orted.

§ 3. Organic and other laws. The Political Code must contain in ddition to the other matters required, the Magna Charta, the Declaration

2599

Vol. III—1

https://archive.org/details/compiledstatutes00idah/page/2599/mode/1up?q=Code

https://archive.org/details/compiledstatutes00idah/page/2602/mode/1up?q=Commission+

Sneaking Roman Civil Law/Chancery into the territorial Organic Acts

Whereas, By the Organic Acts establishing several of the Territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said Territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said Organic Acts respectively :

Therefore, Be it enacted, etc., That it shall not be necessary in any of the courts of the several Territories of the United States, to exercise separately the common law and chancery jurisdictions vested in said courts ; and that the several codes and rules of practice adopted in said Territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby, validated and confirmed : Provided, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law. [Act April 7, 1874.]

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tute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the Territory for which they are respectively appointed.

Sec. 1865. Every Territory shall be divided into three Judicial Districts; and a District Court shall be held in each district of the Territory by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law; and each Judge, after assignment, shall reside in the district to which he is assigned.

Sec. 1866. The jurisdiction, both appellate and original, of the courts provided for in Sections 1907 and 1908, shall be limited by law.

Sec. 1867. No justices of the peace in any Territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

Sec. 1868. The Supreme Court and the District Courts, respectively, of every Territory, shall possess chancery as well as common law jurisdiction.

WHEREAS, By the Organic Acts establishing several of the Territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said Territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said Organic Acts respectively: Therefore,

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Sec. 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the District Courts to the Supreme Court, of all Territories, respectively, under such regulation as may be prescribed by law, but in no case, removed to the Supreme Court, shall trial by jury be allowed in that Court.

Sec. 1870. The Supreme Court of each Territory shall appoint its own clerk, who shall hold his office at the pleasure of the Court for which he is appointed.

Sec. 1871. Each Judge of the Supreme Court of the respective Territories shall designate and appoint one person as Clerk of the District over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such District Clerk shall be entitled to a compensation from the United States.

CHAPTER III.

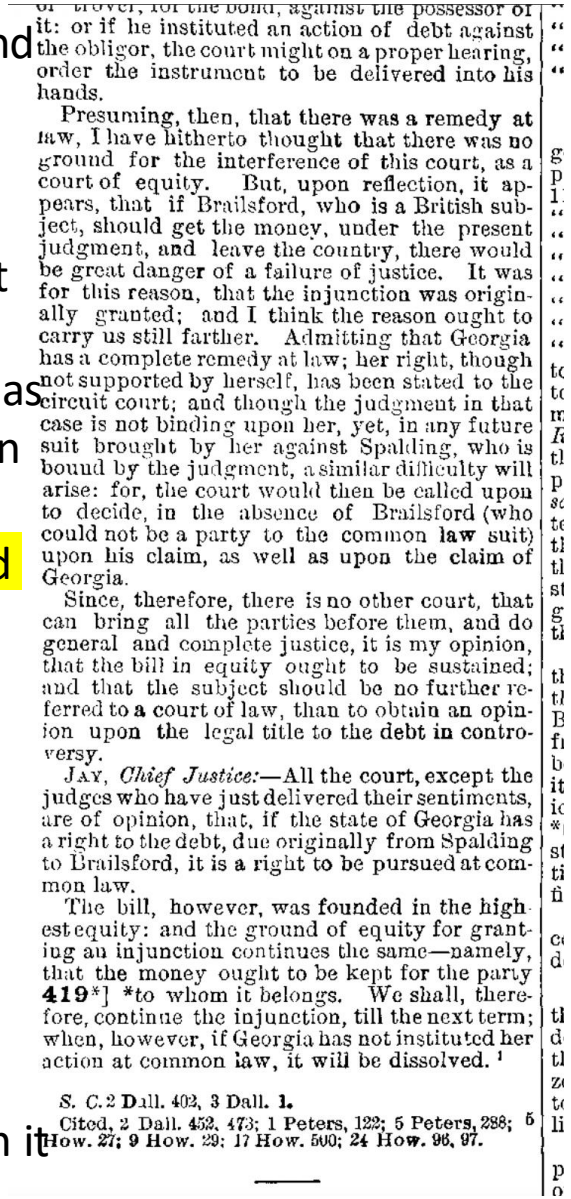
GENERAL VIEW OF EQUITY JURISDICTION.

§ 59. Having traced out the nature and history of Equity Jurisprudence, we are naturally led to the consideration of the various subjects which it embraces, and the measure and extent of its jurisdiction. Courts of equity, in the exercise of their jurisdiction, may, in a general sense, be said to have differed from common law, in the modes of trial, in the modes of proof, and in the modes of relief. One or more of these elements will be found essentially to have entered, as an ingredient, into every subject over which they exerted their authority.

Commentaries on equity jurisprudence
Pg.32
https://archive.org/details/cu31924017859871

Chancery=Equity=Code=Civil Law=Roman Civil Law

[…Presuming, then, that there was s remedy at law, I have hitherto thought that there was no ground for the interference of this court, as a court of equity.
But, upon reflection, it appears, that if Brailsford, who is a British subject, should get the money, under the present judgement , and leave the country, there would be great danger of a failure of justice. It was for this reason, that the injunction was originally granted; and I think the reason ought to carry us still farther.
Admitting that Georgia has a complete remedy at law; her right, though not supported by herself, has been stated to the circuit court; and though the judgment in that case is not binding upon her, yet, in any future suit brought by her against Spaulding, who is bound by the judgment, a similar difficulty will arise: for, the court would then be called upon to decide, in the absence of Brailsford (who could not be a party to the common law suit) upon his claim, as well as upon the claim of Georgia.
Since, therefore, there is no other court, that can bring all the parties before them, and do general and complete justice, it is my opinion, that the bill in equity ought to be sustained;
and that the subject should be no further referred to a court of law, than to obtain an opinion upon the legal title to the debt in controversy.
JAY, Chief Justice:-All the court, except the judges who have just delivered their sentiments, are of opinion, that, if the state of Georgia has a right to the debt, due originally fron Spaulding to Brailsford, it is a right to be pursued at common law.
The bill, however, was founded in the highest equity: and the ground of equity for granting an injunction continues the same-namely, that the money ought to be kept for the party [419] to whom it belongs. We shall, therefore , continue the injunction, till the next term;
when, however, if Georgia has not instituted her
action at common law, it will be dissolved. ..]



it: or if he instituted an action of debt against the obligor, the court might on a proper hearing, order the instrument to be delivered into his hands.

Presuming, then, that there was a remedy at law, I have hitherto thought that there was no ground for the interference of this court, as a court of equity. But, upon reflection, it appears, that if Brailsford, who is a British subject, should get the money, under the present judgment, and leave the country, there would be great danger of a failure of justice. It was for this reason, that the injunction was originally granted; and I think the reason ought to carry us still farther. Admitting that Georgia has a complete remedy at law; her right, though not supported by herself, has been stated to the circuit court; and though the judgment in that case is not binding upon her, yet, in any future suit brought by her against Spalding, who is bound by the judgment, a similar difficulty will arise: for, the court would then be called upon to decide, in the absence of Brailsford (who could not be a party to the common law suit) upon his claim, as well as upon the claim of Georgia.

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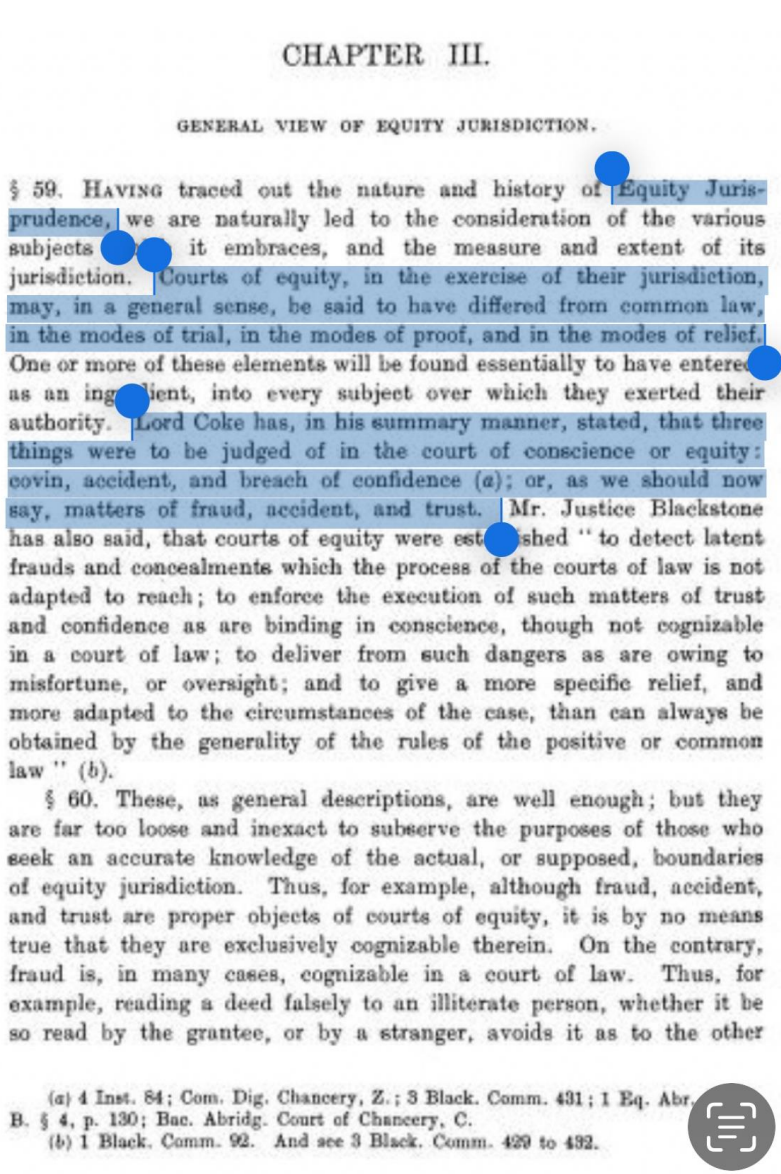
S. C. 2 Dall. 402, 3 Dall. 1.

Cited, 2 Dall. 452, 473; 1 Peters, 122; 5 Peters, 288; 5 How. 27; 9 How. 29; 17 How. 500; 24 How. 96, 97.

https://books.google.com/books/about/Cases_Argued_and_Decided_in_the_Supreme.html?id=tGUNx8qlhr8C

Limitations on equity

Lord Coke has, in his summary manner, stated, that three
things were to be judged of in the court of conscience or equity: covin, accident, and breach of confidence…] […as we should now say, matters of fraud, accident, and trust…]



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§ 60. These, as general descriptions, are well enough; but they are far too loose and inexact to subserve the purposes of those who seek an accurate knowledge of the actual, or supposed, boundaries of equity jurisdiction. Thus, for example, although fraud, accident, and trust are proper objects of courts of equity, it is by no means true that they are exclusively cognizable therein. On the contrary, fraud is, in many cases, cognizable in a court of law. Thus, for example, reading a deed falsely to an illiterate person, whether it be so read by the grantee, or by a stranger, avoids it as to the other

(a) 4 Inst. 84; Com. Dig. Chancery, Z.; 3 Black. Comm. 431; 1 Eq. Abr. B. § 4, p. 130; Bac. Abridg. Court of Chancery, C.
(b) 1 Black. Comm. 92. And see 3 Black. Comm. 429 to 432.

https://archive.org/details/cu31924017859871. Thanks Deez! Duplicate on slide 81

[bouvier's continued] In some states the English common law has been adopted by statute. There is no general rule to ascertain what part of the English common law is valid and binding. To run the line of distinction, is a subject of embarrassment to courts, and the want of it a great perplexity to the student. ..][..it is binding where it is …] […founded in reason…]

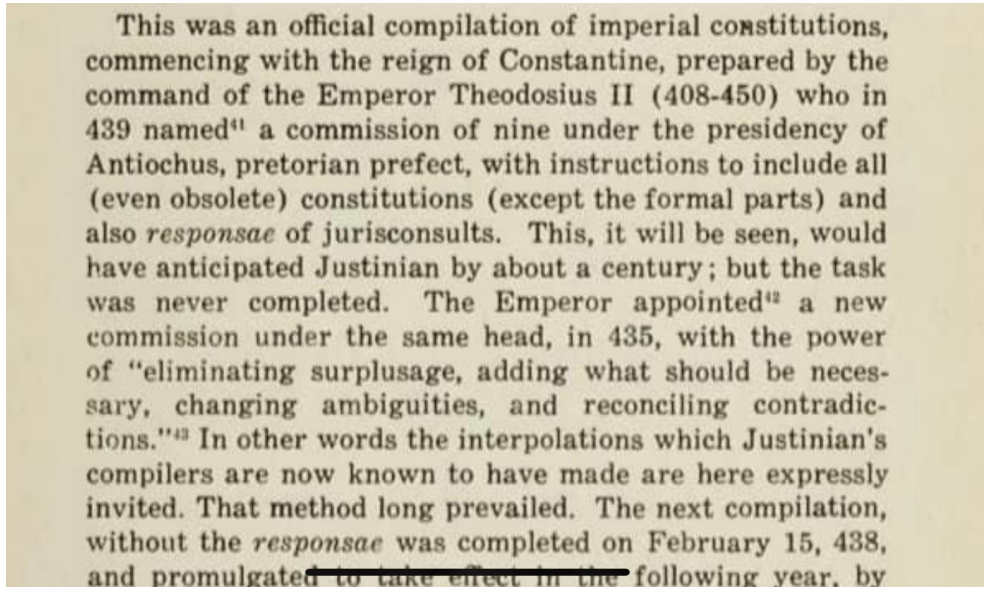
https://archive.org/details/bouvierslawdicti01bouv/page/568/mode/1up

[bouvier's continued] In this country the common law of England has been adopted as the basis of our jurisprudence in all the states except Louisiana [Not quite true, see Art.22 of their Bill of Rights, they must be afforded Common Law Due-Process] . Many of the most valued principles

[why not all of them]

of the common law have been embodied in the constitution of the United States and the constitutions of the several states; and in many of the states the common law and the statutes of England in force in the colony at the time of our independence [bullshit] [should be at the

Roman Code Commission



This was an official compilation of imperial constitutions, commencing with the reign of Constantine, prepared by the command of the Emperor Theodosius II (408-450) who in 439 named[41] a commission of nine under the presidency of Antiochus, pretorian prefect, with instructions to include all (even obsolete) constitutions (except the formal parts) and also *responsae* of jurisconsults. This, it will be seen, would have anticipated Justinian by about a century; but the task was never completed. The Emperor appointed[42] a new commission under the same head, in 435, with the power of "eliminating surplusage, adding what should be necessary, changing ambiguities, and reconciling contradictions."[43] In other words the interpolations which Justinian's compilers are now known to have made are here expressly invited. That method long prevailed. The next compilation, without the *responsae* was completed on February 15, 438, and promulgated to take effect in the following year, by

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and promulgated to take affect the following year...]

https://archive.org/details/historyofenglish01poll

Statutory Interpretation "Rules

golden rule: that courts must interpret :

"according to the intent of them that made it"

by "the words of the statute speak the intention of the Legislature"

Heydon's Case 1584

The mischief rule (tells an interpreter to read a statute in light of the "mischief" that it tries to fix)

Plain meaning rule

Purposive interpretation, replaces mischief rule and golden rule (examines debates pre-enactment)

Lenity Rule a court should resolve ambiguity in favor of the defendant

(1st). What was the common law before the making of the Act?
(2nd). What was the mischief and defect for which the common law did not provide.
(3rd). What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And,
(4th). The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the

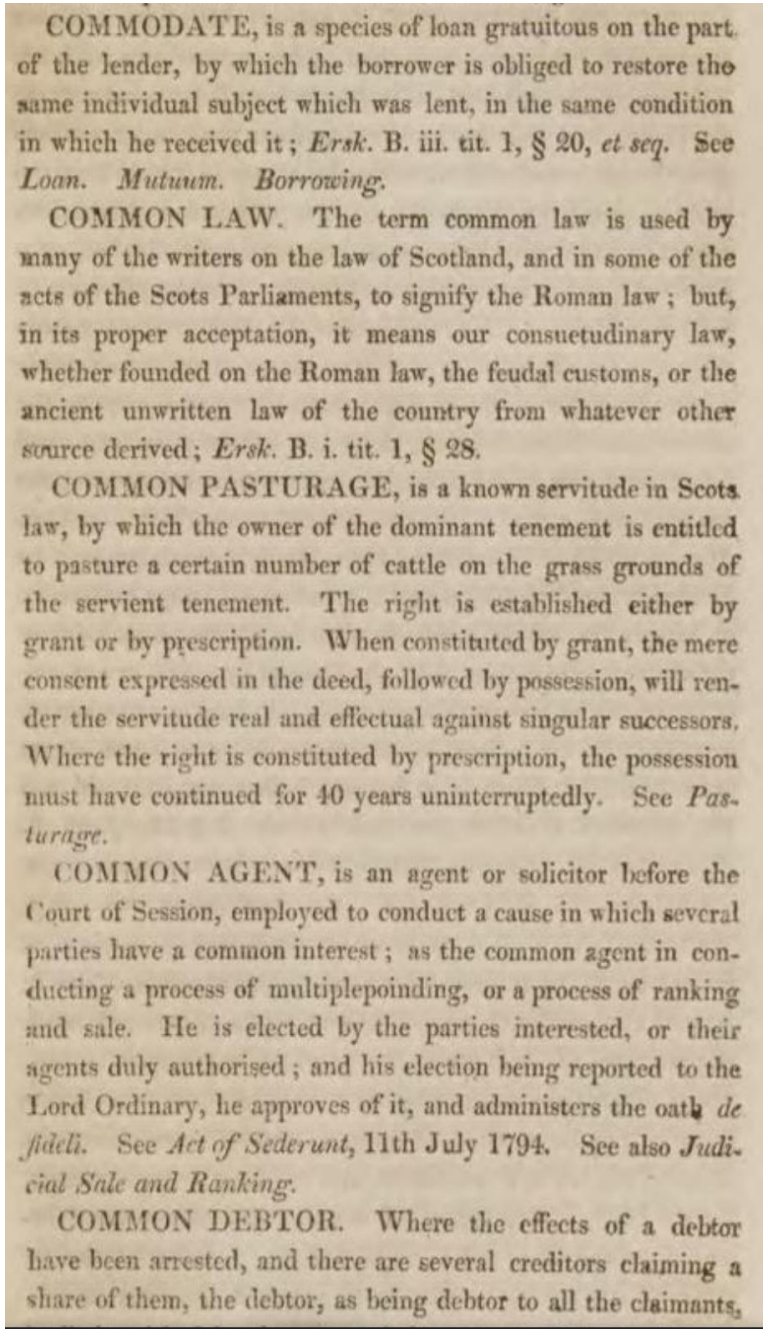
https://en.wikipedia.org/wiki/Heydon%27s_Case

https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2021/06/Bray_The-Mischief-Rule.pdf

institute of the law of Scotland. In four books. In the order of Sir George Mackenzie's Institutions of that law.
John Erskine
1793
POSITIVE LAW
Positive law may be divided into PUBLIC and PRIVATE.
The public law is that which hath more immediately in view the public weal, and the preservation and good order of society ; as laws concerning the constitution of the State, the administration of the government, the police [POLICY] of the country, public revenues, trade and manufactures, the punishment of crimes, etc.
Private law is that which is chiefly intended for ascertaining the civil rights of INDIVIDUALS .
https://archive.org/details/bim_eighteenth-century_an-institute-of-the-law-_erskine-john_1793_1

TITLE 9
EVIDENCE
CHAPTER 3
PUBLIC WRITINGS
9-303. STATUTES — CLASSIFICATION — PUBLIC OR PRIVATE.
Statutes are public or private. A PRIVATE statute is one which concerns only CERTAIN designated INDIVIDUALS , and affects only their private rights.
All other statutes are PUBLIC, in which are included statutes creating or affecting CORPORATIONS .
https://legislature.idaho.gov/statutesrules/idstat/title9/t9ch3/sect9-303/

This is why it's so striking to see that are statutes are modeled CA that were modeled after Scotland-erskines



COMMODATE, is a species of loan gratuitous on the part of the lender, by which the borrower is obliged to restore the same individual subject which was lent, in the same condition in which he received it; *Ersk.* B. iii. tit. 1, § 20, *et seq.* See *Loan. Mutuum. Borrowing.*

COMMON LAW. The term common law is used by many of the writers on the law of Scotland, and in some of the acts of the Scots Parliaments, to signify the Roman law; but, in its proper acceptation, it means our consuetudinary law, whether founded on the Roman law, the feudal customs, or the ancient unwritten law of the country from whatever other source derived; *Ersk.* B. i. tit. 1, § 28.

COMMON PASTURAGE, is a known servitude in Scots law, by which the owner of the dominant tenement is entitled to pasture a certain number of cattle on the grass grounds of the servient tenement. The right is established either by grant or by prescription. When constituted by grant, the mere consent expressed in the deed, followed by possession, will render the servitude real and effectual against singular successors. Where the right is constituted by prescription, the possession must have continued for 40 years uninterruptedly. See *Pasturage.*

COMMON AGENT, is an agent or solicitor before the Court of Session, employed to conduct a cause in which several parties have a common interest; as the common agent in conducting a process of multiplepoinding, or a process of ranking and sale. He is elected by the parties interested, or their agents duly authorised; and his election being reported to the Lord Ordinary, he approves of it, and administers the oath *de fideli.* See *Act of Sederunt,* 11th July 1794. See also *Judicial Sale and Ranking.*

COMMON DEBTOR. Where the effects of a debtor have been arrested, and there are several creditors claiming a share of them, the debtor, as being debtor to all the claimants,

241

https://archive.org/details/dictionaryof_bell_1826_01

SECTION 1. The Governor of the state of Idaho is hereby authorized and empowered to present to the state senate, now in session, for its approval, the names of five persons, learned in the law and members of the bar of the supreme court of this state, one of whom to be designated by the Governor, shall be chairman; such persons, upon being approved by said senate, shall be known as the code commission, and they shall be authorized to codify the laws, civil and criminal, and the law of civil procedure, and to revise, simplify, arrange, and consolidate the statutes of the state of Idaho, which shall be in force at the time such commission shall make its final report.

SEC. 2. It shall be the duty of the commission to prepare the following codes, the political code, the civil code, the code of civil procedure and the penal code.

The political code shall treat of the sovereignty of the people of the state, of the political rights and duties, of the political divisions of the state, of the government of the counties, cities and towns and of such other general laws as shall seem proper to the commission.

The civil code shall consist of the body of the common

“CODIFICATION OF LAWS.
AN ACT TO PROVIDE FOR THE CODIFICATION OF THE LAWS
OF THE STATE OF IDAHO.
Be it enacted by the Legislature of the State of Idaho:
SECTION 1. The Governor [EXECUTIVE] of the state of Idaho is hereby authorized and empowered to present to the state senate [LEGISLATIVE], now in session, for its approval, the names of five persons, learned in the law and members of the bar of the supreme court [JUDICIAL] of this state, one of whom to be designated by the Governor [EXECUTIVE], shall be chairman; such persons, upon being approved by said senate[LEGISLATIVE],shall be known as the code commission, and they shall be authorized to codify the laws, civil and criminal, and the law of civil procedure, and to revise, simplify, arrange, and consolidate the statutes of the state of Idaho, which shall be in force at the time such commission [EXECUTIVE & JUDICIAL] shall make its final report.
SEC. 2.
It shall be the duty of the commission [EXECUTIVE & JUDICIAL] to prepare the following codes, the political code, the civil code, the code of civil procedure and the penal code [ROMAN CIVIL LAW IN CONTRADISTINCTION TO AMERICAN COMMON LAW]
The political code shall treat of the sovereignty of the people of the state, of the political rights and duties, of the political divisions of the state, of the government of the counties, cities and towns and of such other general laws as shall seem proper to the commission.”

notice shall be included in such published notice and after such publication the interest thereon shall cease after the time now provided by law, but not before.

SEC. 4. For all sums which are paid by the county treasurer as interest upon any warrant or warrants, after the earliest date at which there were sufficient funds with which to have called and paid the same, such officer shall be liable upon his official bond; and for the wilful violation of any of the provisions of this act, the said treasurer shall be deemed guilty of neglect to perform the official duties pertaining to his office, and shall be removed therefrom as provided by law.

SEC. 5. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 6. Whereas an emergency exists therefor, this act shall take effect and be in force from and after its passage.

Approved March 2, 1899.

S. B. NO. 23.

CODIFICATION OF LAWS.

AN ACT TO PROVIDE FOR THE CODIFICATION OF THE LAWS OF THE STATE OF IDAHO.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. The Governor of the state of Idaho is hereby authorized and empowered to present to the state senate, now in session, for its approval, the names of five persons, learned in the law and members of the bar of the supreme court of this state, one of whom to be designated by the Governor, shall be chairman; such persons, upon being approved by said senate, shall be known as the code commission, and they shall be authorized to codify the laws, civil and criminal, and the law of civil procedure, and to revise, simplify, arrange, and consolidate the statutes of the state of Idaho, which shall be in force at the time such commission shall make its final report.

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The civil code shall consist of the body of the common

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ex Stalker.....Oneida County
R. Jones.....Oneida County
W. Cummings.....Owyhee County
m. Nichols.....Shoshone County
M. Jeffries.....Washington County

Speaker—E. B. True.

This session of the Legislature continued for sixty days, an act Congress having extended the time from forty to sixty days. he Council organized on the first day, and the House on the second y. They worked faithfully and passed some good laws. Among ese was a complete revision of our Code of Civil Procedure. The rk of compiling this Code was due almost wholly to the Hon. R. Johnson and Judge John S. Gray. Mr. Johnson was a member the Council, and Mr. Gray a member of the House. They had ne the greater portion of compiling these laws before the Legis- ure met, and the members had such confidence in their ability d integrity that their work of compilation was accepted and acted into law by the Legislature with but very few amendments.

It was discovered at this session that our Territorial tax levy wentyfive cents on the hundred dollars of taxable property was inging in more money than was necessary to meet current ex- nses and to pay interest on the bonded debt, the principal of hich would not become due for several years. So the Legislature

Assistance of counsel vs Atturney

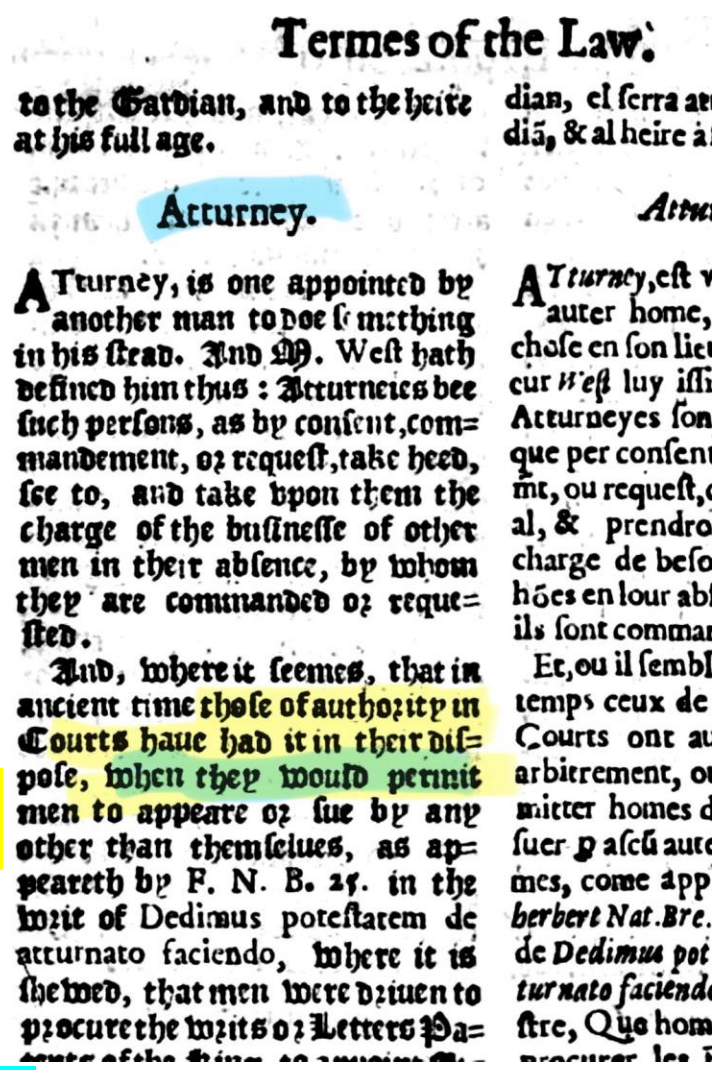
Les termes de la ley. Pg. 21

[And, here it seemes, that in ancient time those of authority in Courts have had it in their dispose, when they would permit men to appeare or sue by another than themselves…]

Sir Edward Coke

Selected writings-2cnd institutes

[…Secondly, the Court ought to be in stead of counsel for the prisoner, to see that nothing be urged against him contrary to law and rights nay, any learned man that is present may informe the Court for the bench of the prisoner, of any thing that may make the proceedings erroneous. [This also is why proceedings are to be open…]



Termes of the Law.

to the Gardian, and to the heire at his full age.

Atturney.

ATturney, is one appointed by another man to doe something in his stead. And M. West hath defined him thus: Atturneies bee such persons, as by consent, commandement, or request, take heed, see to, and take upon them the charge of the businesse of other men in their absence, by whom they are commanded or requested.

And, where it seemes, that in ancient time those of authority in Courts haue had it in their dispose, when they would permit men to appeare or sue by any other than themselues, as appeareth by F. N. B. 25. in the writ of Dedimus potestatem de atturnato faciendo, where it is shewed, that men were driuen to procure the writs or Letters Pa-

dian, el serra a
diã, & al heire à

Attu

ATturney, est
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cur West luy iss
Atturneyes son
que per consen
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hões en lour ab
ils sont comma

Et, ou il sembl
temps ceux de
Courts ont a
arbitrement, o
mitter homes d
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mes, come app
herbert Nat. Bre.
de Dedimus pot
turnato faciend
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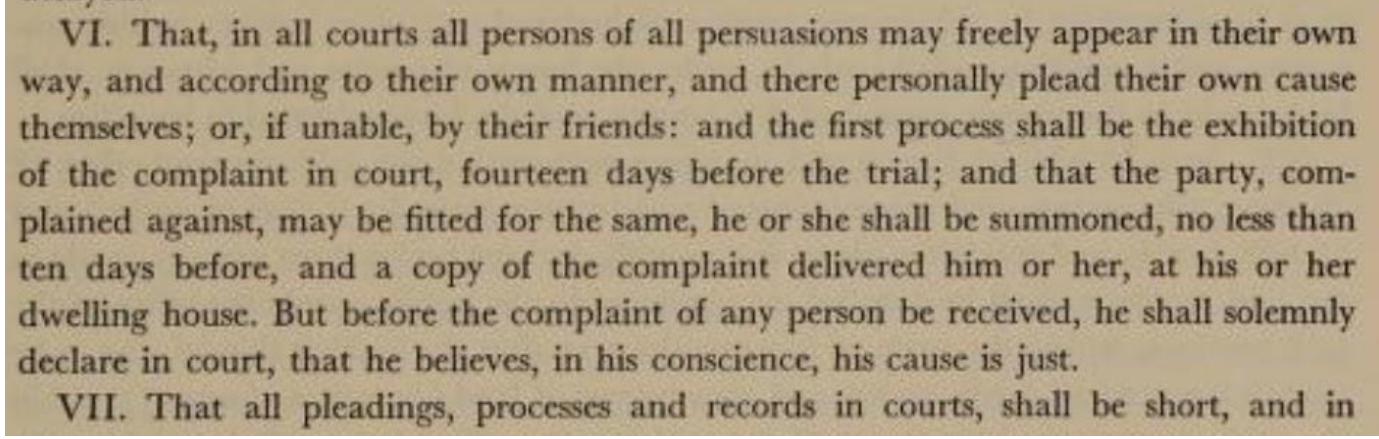
1682 PENNSYLVANIA FRAME OF GOVERNMENT OF PENNSYLVANIA

April 25, 1682



VI. That, in all courts all persons of all persuasions may freely appear in their own way, and according to their own manner, and there personally plead their own cause themselves; or, if unable, by their friends: and the first process shall be the exhibition of the complaint in court, fourteen days before the trial; and that the party, complained against, may be fitted for the same, he or she shall be summoned, no less than ten days before, and a copy of the complaint delivered him or her, at his or her dwelling house. But before the complaint of any person be received, he shall solemnly declare in court, that he believes, in his conscience, his cause is just.

VII. That all pleadings, processes and records in courts, shall be short, and in

VI. That, in all courts all persons of all persuasions may freely appear in their own way, and according to their own manner, and there personally plead their own cause themselves; or, if unable, by their friends: and the first process shall be the exhibition of the complaint in court, fourteen days before the trial…]

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CONTINUED

VII. That all pleadings, processes and records in courts, shall be short, and in English, and in an ordinary and plain character, that they may be understood, [no GLOSS, or Legalese] and justice speedily administered.

XII. That all persons wrongfully imprisoned, or prosecuted at law, shall have double damages against the informer, or prosecutor,

XXVI. That all witnesses, coming, or called, to testify their knowledge in or to any matter or thing, in any court, or before any lawful authority, within the said province, shall there give or deliver in their evidence, or testimony, by solemnly promising to speak the truth, the whole truth, and nothing but the truth, to the matter, or thing in question. And in case any person so called to evidence, shall be convicted of wilful falsehood, such person shall suffer and undergo such damage or penalty, as the person, or persons, against whom he or she bore false witness, did, or should, undergo; and shall also make satisfaction to the party wronged, and be publicly exposed as a false witness, never to be credited in any court, or before any Magistrate, in the said province.

Pg. 16

§. 70

It shall be a base and vile thing to Plead for Money or Reward ; nor shall any one (except he be a near Kinsman, not farther off than Cofin-german to the Party concerned) be permitted to Plead another Man's Cause, till before the Judge in open Court he hath taken an Oath, that he doth not Plead for Money or Reward, nor hath nor will receive, nor directly nor indirectly Bargained with the Party whose Cause he is going to Plead, for Money or any other reward for Pleading his Cause.

https://archive.org/details/fundamentalconst

Case-Law

reports, leading reports, case study, law of the case , stare decesis

How it has morphed into JUDGE MADE LAW

Maxim: It is the duty of a judge to declare, not make law

[…principles are always traceable to a wise and deeply founded experience; they are, therefore, ever consentaneous, and in harmony with themselves and with reason; and whenever abandoned as guides to the judicial course, the aberration must lead to bewildering uncertainty and confusion. Conducted by these principles, consecrated both by time and the obedience of sages…]

"Case-law" citation intentionally not referenced

of the effects which must ever follow a departure from the settled principles of the law. These principles are always traceable to a wise and deeply founded experience; they are, therefore, ever consentaneous, and in harmony with themselves and with reason; and whenever abandoned as guides to the judicial course, the aberration must lead to bewildering uncertainty and confusion. Conducted by these principles, consecrated both by time and the obedience of sages, I am brought

SPIRIT OF LAW
BARON DE MONTESQUIEU
IN TWO VOLUMES*

VOL. 1 -CHPT. III.
In what Governments, and in what Cases the Judges ought to determine according to the express Letter of the Law.
The nearer a government approaches to a republic, the more the manner of judging becomes settled and fixed. Wherefore it was a fault in the republic of Sparta, for the Ephori to pass such arbitrary judgments, without having any laws to direct them. The first consuls at Rome pronounced sentence in the fame manner as the Ephori ; but the inconveniency of this proceeding was soon felt, and they were obliged to have recourse to express and fixed laws.
In despotic governments there are no laws ; the judge himself is his own rule.
There are laws in monarchies and where these are explicit, the judge conforms to them where they are otherwise, he endeavours to follow their spirit.
In republics the very nature of the constitution requires the judges to keep to the letter of the law.

Here there is no citizen against whom a law can be interpreted, in cases where either his honour , property, or life is concerned.
Chpt. 3 -Of Laws -Pg. 80
In England the jury determine whether the fact brought under their cognizance be proved or not ; if it be proved, the judge pronounces the punishment inflicted by the law for such a particular fact,, and for this he needs only open his eyes.
CHAP. IV -Pg. 81 Of the Manner of forming Judgments.

HENCE arise the different manners of forming judgments.
In monarchies the judges take the method of arbiters; They deliberate together, they communicate their thoughts in order to come to an agreement, they moderate their opinion to render it conformable to that of others; and the sentiments of the fewest must yield to those of two thirds of the whole number.
But this is not agreeable to the nature of a republic.

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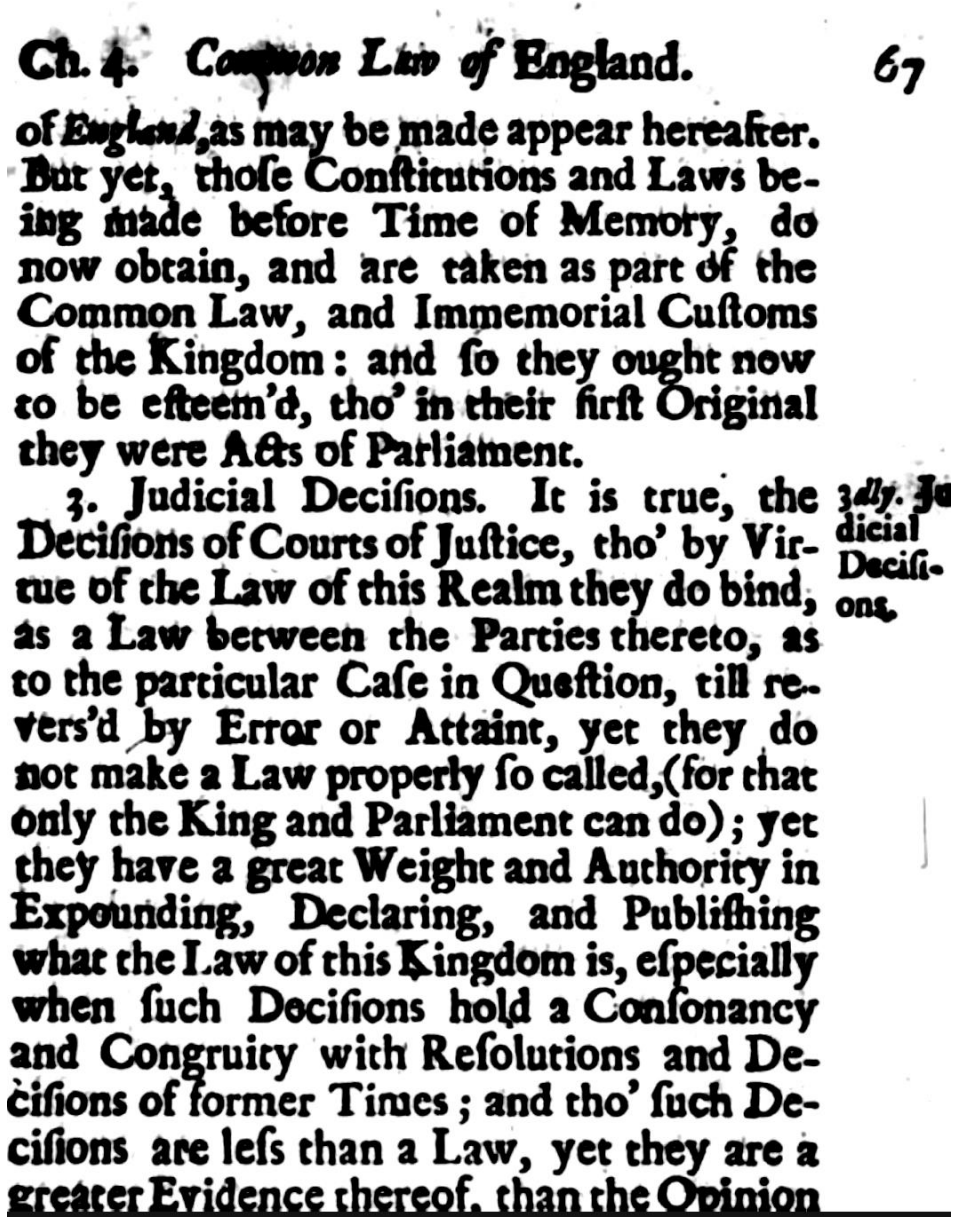
3. Judicial Decisions. It is true, the Decisions of Courts of Justice, tho' by Virtue of the Law of this Realm they do bind as a Law between the Parties thereto, as to the particular Case in Question, till revers'd by Error or Attaint, yet they do not make a Law properly so called, (for that only the King and Parliament can do); yet they have a great Weight and Authority in Expounding, Declaring, and Publishing what the Law of this Kingdom is, especially when such Decisions hold a Consonancy and Congruity with Resolutions and Decisions of former Times; and tho' such Decisions are less than a Law, yet they are a greater Evidence thereof...]



Ch. 4. Common Law of England. 67

of England, as may be made appear hereafter. But yet, thoſe Conſtitutions and Laws being made before Time of Memory, do now obtain, and are taken as part of the Common Law, and Immemorial Cuſtoms of the Kingdom: and ſo they ought now to be eſteem'd, tho' in their firſt Original they were Acts of Parliament.

3. Judicial Deciſions. It is true, the Deciſions of Courts of Juſtice, tho' by Virtue of the Law of this Realm they do bind, as a Law between the Parties thereto, as to the particular Caſe in Queſtion, till revers'd by Error or Attaint, yet they do not make a Law properly ſo called, (for that only the King and Parliament can do); yet they have a great Weight and Authority in Expounding, Declaring, and Publiſhing what the Law of this Kingdom is, eſpecially when ſuch Deciſions hold a Conſonancy and Congruity with Reſolutions and Deciſions of former Times; and tho' ſuch Deciſions are leſs than a Law, yet they are a greater Evidence thereof, than the Opinion

3dly. Judicial Deciſions.

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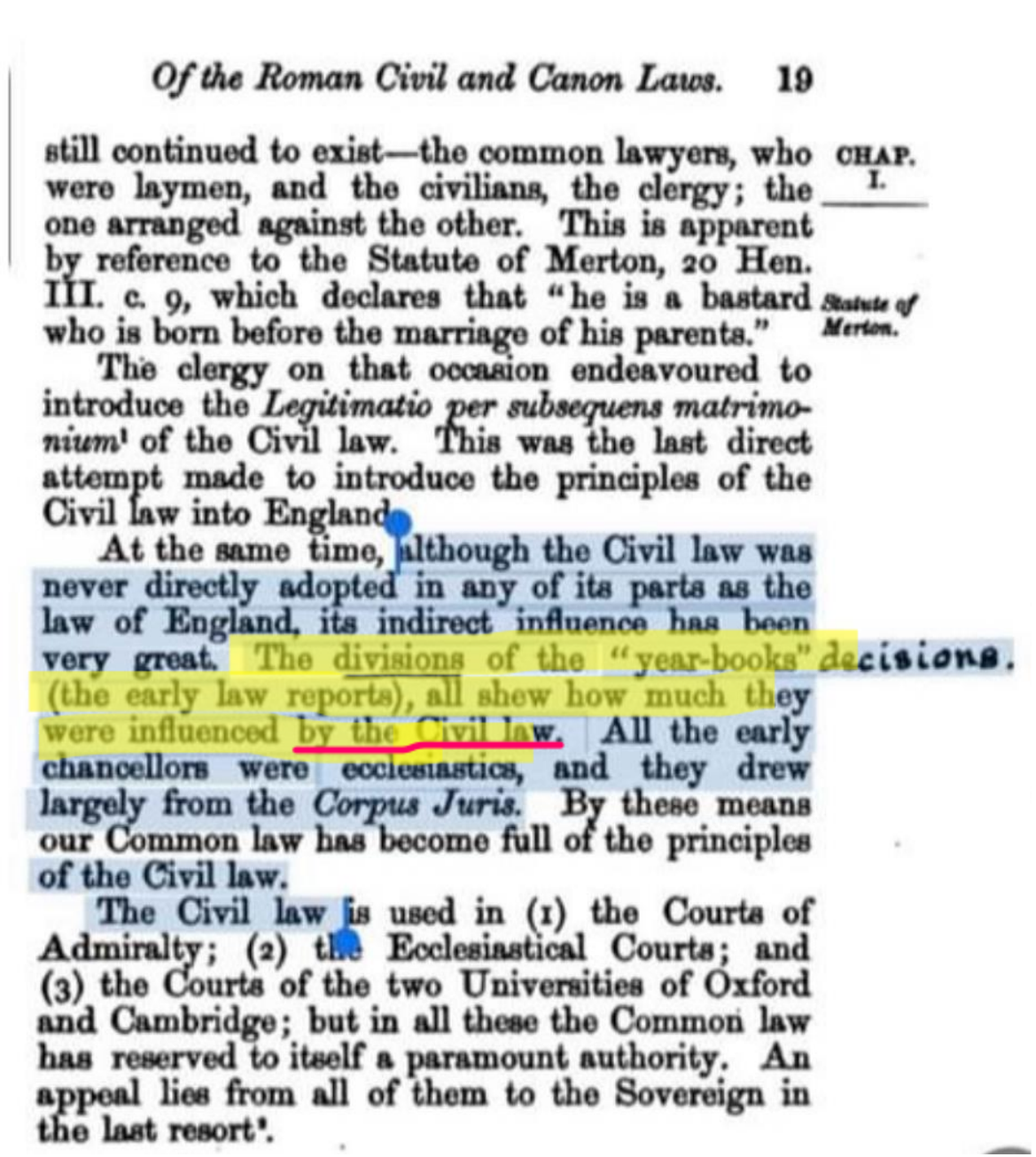

Of the Roman Civil and Canon Laws. 19

still continued to exist—the common lawyers, who were laymen, and the civilians, the clergy; the one arranged against the other. This is apparent by reference to the Statute of Merton, 20 Hen. III. c. 9, which declares that "he is a bastard who is born before the marriage of his parents." CHAP. I. *Statute of Merton.*

The clergy on that occasion endeavoured to introduce the *Legitimatio per subsequens matrimonium*[1] of the Civil law. This was the last direct attempt made to introduce the principles of the Civil law into England.

At the same time, although the Civil law was never directly adopted in any of its parts as the law of England, its indirect influence has been very great. The divisions of the "year-books" (the early law reports), all shew how much they were influenced by the Civil law. All the early chancellors were ecclesiastics, and they drew largely from the *Corpus Juris*. By these means our Common law has become full of the principles of the Civil law.

The Civil law is used in (1) the Courts of Admiralty; (2) the Ecclesiastical Courts; and (3) the Courts of the two Universities of Oxford and Cambridge; but in all these the Common law has reserved to itself a paramount authority. An appeal lies from all of them to the Sovereign in the last resort[1].

Pg. 19

The divisions of the "year-books" (the early law reporte), all shew how much they were influenced by the Civil law. All the early chancellors were ecclesiastics, and they drew largely from the Corpus Juris. By these means our Common law has become...] [ABROGATED]

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An appeal lies from all of them to the Sovereign in the last resort.

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CASE SYSTEM.

A method of teaching or studying the science of the law by a study of the cases historically, or by the inductive method. It was introduced in the Law School of Harvard University in 1869-70 by Christopher 0. Langdell, Dane Professor of Law. It is usually based upon printed collections of selected cases arranged chronologically under appropriate titles. The system is not necessarily based upon the exclusive use of cases, but the cases are made the basis of Instruction. Text-books may be used for the purpose of reference and collateral reading, and are so used by many teachers under this system. It has been very generally adopted in law schools.

The reasons for the adoption of this system of instruction are given in a paper read before the Section of' Legal Education of the American Bar Association in 1894 by Professor W. A. Keener, formerly of the Law School of Harvard University.

"1. That law, like other applied sciences, should be studied in its application, if one is to acquire a working knowledge thereof. 2. That this is entirely feasible for the reason that while the adjudged cases are numerous the principles controlling them are comparatively few. 3. That it is by the study of cases that one is to acquire the power of legal reasoning, discrimination and judgment, qualities indispensable to the practicing lawyer. 4. That the study of cases best develops the power to analyze and to state clearly and concisely a complicated state of facts, a power which, in no small degree, distinguished the good from the poor and indifferent lawyer. 5. That the system because of the study of fundamental principles, avoids the danger of producing a mere case lawyer, while it furnishes, because the principles are studied in their application to facts, an effectual preventive of any tendency to mere academic learning. 6. That the student, by the study of cases, not only follows the law in its growth and development, but thereby acquires the habit of legal thought...]

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THE LAW OF THE CASE. -

In a recent case it was held on a second appeal to an intermediate court, after the former appeal had resulted in a remand for a new trial under certain rulings, that the trial court erred in following an intervening decision of the highest court inconsistent therewith.

District of Columbia v. Breter, 37 Wash. L. Rep. 65 (D. C., Ct. App.,

While the interior courts would, of course, be bound by

such decision in subsequent cases, the opinion holds that the rulings are final as to the case in which they are given in the intermediate and trial courts.

This is an application of the so-called doctrine of the law of the case, a doctrine that the rulings of a court of last appeal conclusively settle the law as to the case in which they are given, not only in the lower courts, but also in the court giving them.

The principal case applies it to the rulings of an intermediate court when that is the last court to which appeal is taken. And the rule is supported by the weight of authority to that extent.

For orderly procedure inferior courts must be bound by the decision of their supreme court in the particular case.

But the situation becomes somewhat startling when the supreme court applies the rule to itself and refuses on subsequent appeal to correct its former mistakes.

The explanation is that a suit must be ended somewhere, and that it seems worth while to curtail litigation at the expense of a misdecision in isolated cases.

Whether this should extend to the rulings of the last intermediate court to which appeal is prosecuted seems to depend on whether the defeated party by accepting a new trial on the basis of those rulings has lost his right to appeal therefrom.

If he has not, the rule does not logically apply, because it

rests on the ground that the holdings in question are the last word in the case on that issue, and the only practical result of its application would be to force the parties to further proceedings to attain precisely the same result.

liability for loss.[13] In a recent case it was held that a shipper against whom a carrier had discriminated might bring *mandamus* in a state court to compel the railroad to perform its common law duty.[14] *Mo. Pac. R. R.* v. *Larabee Mill Co.*, 29 Sup. Ct. Rep. 214 (Jan. 11, 1909). The court distinguishes another recent decision [15] on the ground that there a direct burden was imposed on interstate commerce, while in the principal case the state was merely exercising its police power in a manner that incidentally burdened such commerce. A further distinction would seem to appear in that in the McNeill case the regulation was made by a state board, while the Interstate Commerce Commission was created to make just such regulations; so Congress could fairly be said to have acted, thereby excluding action by such state board.

THE LAW OF THE CASE. — In a recent case it was held on a second appeal to an intermediate court, after the former appeal had resulted in a remand for a new trial under certain rulings, that the trial court erred in following an intervening decision of the highest court inconsistent therewith. *District of Columbia* v. *Brewer*, 37 Wash. L. Rep. 65 (D. C., Ct. App., Jan. 5, 1909). While the inferior courts would, of course, be bound by such decision in subsequent cases, the opinion holds that the rulings are final as to the case in which they are given in the intermediate and trial courts. This is an application of the so-called doctrine of *the law of the case*, a doctrine that the rulings of a court of last appeal conclusively settle the law as to the case in which they are given, not only in the lower courts, but also in the court giving them. The principal case applies it to the rulings of an intermediate court when that is the last court to which appeal is taken. And the rule is supported by the weight of authority to that extent.[1]

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34 L. R. A. 321.

the appellate court having laid down a rule for measure of damages, the same has become a binding rule between the parties to this controversy, under the well-known doctrine of the "law of the case." This well-known doctrine, which has almost universal application throughout the states of the Union, and in the federal courts, and which has received approval in hundreds of cases under a great variety of circumstances, will be found concisely stated in 4 Corpus Juris, at page 1093:

"It is a rule of general application that the decision of an appellate court in a case is the law of that case on the point presented throughout all the subsequent proceedings in the case in both the trial and the appellate courts, and no question necessarily involved and decided on that appeal will be considered on a second appeal or writ of error in the same case, provided the facts and issues are substantially the same as those on which the first decision rested."

The courts of every state in the Union, except Delaware and Wyoming, have approved the doctrine..]

https://casetext.com/case/gohman-v-st-bernard

casetext.com

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The courts of every state in the Union, except Delaware and Wyoming, have approved the

stare decisis- The American law register - 1852

[…But it is demanded of us that we shall follow the decision in Weidman v. Maish , where this very devise has received a construction. And why must we follow it?

If the law was totally misapplied in that case, when one forty-fourth part of this land was in controversy, must we therefore continue to misapply it as often as the other shares come up for discussion?

Because we or our predecessors have wronged one man by our blunders, must we therefore wrong forty-three others for the sake of our own consistency?

If not thus, then on what principle can we do it?

Not simply because this very devise has been decided on: most clearly not. This would be presenting the doctrine of former recovery in a new aspect.

One verdict and judgment are not conclusive even in the very same interest, and between the very same parties; whereas this would make one verdict and judgment, as to one interest and one set of parties, conclusive as to all similar interests and as to other parties, even though not heard.

Does the doctrine of stare decisis hold us to conform to that decision ?

I trust that the doctrine shall never be held to mean, that the last decision of a point is to be taken as the law of all future cases, right or wrong.

Then, indeed, will the isolated blunders of this Court be of far more force than an Act of Assembly or a clause of the Constitution, for they may invade the inviolability of contracts.

This is certainly a new phase of the doctrine of stare decisis , that is most suicidal in its results. It is setting aside the old doctrine, and establishing a new one.

It is a declaration that all courts of the last resort must have been in error every time they have acknowledged and set aside former errors, which has not been an unfrequent event.

Nay, more; it is claiming for this Court an infallability that can have no result but the perpetuation of the most incompatible errors.

As I understand this doctrine, it is tersely expressed in the maxim [They are not to be changed at all, which always lead to a certain interpretation] minime sunt mutanda quae interpretationem certain semper liabuerunt;

and is well qualified by that other one, [which are introduced contrary to the principle of law, must not be drawn into consequence] quae contra rationem juris introducta sunt, non debent train in consequentiam, both of which are used by Lord Coke, and are derived from the Roman law.

It is well explained in Lieber's Pol. Herm. 209. "In a free country, where a knowledge of the citizens' rights is all important, a precedent in law, if correctly and clearly stated—this is an essential requisite—and if applied with discernment, and with the final object of all law before our eyes, ought to have its full weight. If there has been a series of uniform decisions on the same point, they ought to have the force of law, because, in this case, they have become conclusive evidence of the law." And the same writer has well estimated the value of a mere decision, when he says, 1 Pol. Ethics, 265, " there is hardly such a thing as judge- made law, but only judge-spoken law.

The doctrine pronounced today from a bench may, indeed, not he found in any law book; but the judge has ascertained and declared the sense of the community as already evinced in its usages and habits of business.

If he has not expressed it correctly, society will show its sovereign power, his decision will be reversed tomorrow, or corrected by statute.

The true doctrine on this subject was declared and acted upon by this Court in Geddis v. Haivlc , 1 Watts, 286, and Cowden's Appeal, 1 State Rep. 279, and is thus laid down by Chancellor Kent: (Com. Lect. 21,)

"I wish not to be understood to press too strongly the doctrine of stare decisis, when I recollect that there are a thousand cases to be pointed out in the English and American books of reports which have been overruled, doubted, or limited in their application.

It is probable that the records of many of the courts in this country are replete with hasty and crude decisions; and such cases ought to be examined without fear, and revised without reluctance, rather than have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error.

Even a series of decisions is not always conclusive evidence of what is law, and the revision of a decision very often resolves itself into a mere question of expediency, depending upon the consideration of the importance of

certainty in the rule, and the extent of property to he effected by a change of it."

https://archive.org/details/americanlawregis00amer/page/234/mode/2up

REPORTER. A person employed in making out and publishing the history of cases decided by the court.

2. The act of congress of August 26, 1842, sect., 2, enacts, that in the supreme court of the United States, one reporter shall be appointed by the court with the salary of twelve hundred and fifty dollars; provided that he deliver to the secretary of state for distribution, one hundred and fifty copies of each volume of reports that he shall hereafter prepare and publish, immediately after the publication thereof, which publication shall be made annually within four months after the adjournment of the court at which the decisions are made.

3. In some of the states the reporters are appointed by authority of law; in others, they are volunteers.

REPORTS. Law books, containing a statement of the facts and law of each case which has been decided by the courts; they are generally the most certain proof of the judicial decisions of the courts, and contain the most satisfactory evidence, and the most authoritative and precise application of the rules of the common law. Lit. s. 514; Co. Lit. 293 a; 4 Co. Pref.; 1 Bl. Com. 71 Ram. on Judgm. ch. 13.

2. The number of reports has increased to an inconvenient extent, and should they multiply in the same ratio which of late they have done, they will so soon crowd our libraries as to become a serious evil. The indiscriminate report of cases of every description is deserving of censure. Cases where first principles are declared to be the law, are reported with as much care as those where the most abstruse questions are decided. But this is not all; sometimes two reporters, with the true spirit of book-making, report the same set of cases, and thereby not only unnecessarily increase the lawyer's already encumbered library, but create confusion by the discrepancies which occasionally appear in the report of the same case.

3. The modern reports are too often very diffuse and inaccurate. They seem too frequently made up for the purpose of profit and sale, much of the matter they contain being either useless or a mere repetition, while they are deficient in stating what is really important.

4. A report ought to contain, 1. The name of the case. 2. The court in which it originated; and, when it has been taken to another by appeal,

Page 1352

[....Pg. 1351

2.

The number of reports have increased to an inconvenient extent. And should they multiply in the same ratio which of late they have done, they will so soon crowd our libraries as to become a serious evil.

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https://archive.org/details/7817906-bouvier-s-common-law-dictionary/page/1351/mode/1up

[…legislature alone is the exclusive expounder of the sense of the constitution in every part of it whatever. and they alledge in it's support that this branch has authority, to impeach and punish a member of either of the others acting contrary to it's declaration of the sense of the constitution.

The 2d question whether the judges are invested with exclusive authority to decide on the constitutionality of a law, has been heretofore a subject of consideration with me in the exercise of official duties. certainly there is not a word in the constitution which has given that power to them more than to the Executive or Legislative branches. questions of property, of character and of crime being ascribed to the judges, through a definite course of legal proceeding, laws involving such questions belong of course to them; and as they decide on them ultimately & without appeal, they of course decide, for themselves, the constitutional validity of the law. on laws again prescribing executive action, & to be administered by that branch ultimately and without appeal, the Executive must decide for themselves also, whether, under the constitution, they are valid or not. so also as to laws governing the proceedings of the legislature, that body must judge for itself the constitutionality of the law, & equally without appeal or controul from it's coordinate branches. and, in general, that branch which is to act ultimately, and without appeal, on any law, is the rightful expositor of the validity of the law, uncontrouled by the opinions of the other coordinate authorities. it may be said that contradictory decisions may arise in such case, and produce inconvenience. this is possible, and is a necessary failing in all human proceedings. yet the prudence of the public functionaries, and authority of public opinion will generally produce accomodation. such an instance of difference occurred between the judges of England (in the time of Ld Holt) and the House of Commons. but the prudence of those bodies prevented inconvenience from it. so in the cases of Duane and of William Smith of S. Carolina, whose characters of citizenship stood precisely on the same ground, the judges in a question of meum and tuum which came before them, decided that Duane was not a citizen; and in a question of membership the House of Representatives under the same words of the same provision[2] adjudged William Smith to be a citizen. yet no inconvenience has ensued these contradictory decisions. this is what I believe myself to be sound. but there is another opinion entertained by some men of such judgment & information as to lessen my confidence in my own. that is, that the legislature alone is the exclusive expounder of the sense of the constitution in every part of it whatever. and they alledge in it's support that this branch has authority, to impeach and punish a member of either of the others acting contrary to it's declaration of the sense of the constitution. it may indeed be answered that an act may still be valid altho' the party is punished for it, right or wrong. however this opinion which ascribes exclusive exposition to the legislature merits respect for it's safety, there being in the body of the nation a controul over them, which, if expressed by rejection on the subsequent exercise of their elective franchise, enlists public opinion against their exposition, and encourages a judge or Executive on a future occasion[3] to adhere to their former opinion. between these two doctrines, every one has a right to chuse; and I know of no third meriting any respect.

https://founders.archives.gov/documents/Jefferson/03-08-02-0427

[…to consider the judges as the ultimate arbiters of all constitutional questions: a very dangerous doctrine indee[d] and one which would place us under the despotism of an Oligarchy. our judges are as honest as other men, and not more so. they have, with others, the same passions for party, for power, and the privileges of their corps. their maxim is 'boni judicis est ampliare jurisdictionem,' and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective controul. the constitution has erected no such single tribunal knowing that, to whatever hands confided, with the corruptions of time & party it's members would become despots.

Thomas Jefferson to William Charles Jarvis, 28 September 1820

To William Charles Jarvis

Monticello Sep. 28. 20.

I thank you, Sir, for the copy of your Republican which you have been so kind as to send me; and I should have acknoleged it sooner, but that I am just returned home after a long absence. I have not yet had time to read it seriously: but in looking over it cursorily I see much in it to approve: and shall be glad if it shall lead our youth to the practice of thinking on such subjects & for themselves[.] that it will have this tendency may be expected, and for that reason I feel an urgency to note what I deem an error in it, the more requiring notice as your opinion is strengthened by that of many others. you seem in pages 84. & 148. to consider the judges as the ultimate arbiters of all constitutional questions: a very dangerous doctrine indee[d] and one which would place us under the despotism of an Oligarchy. our judges are as honest as other men, and not more so. they have, with others, the same passions for party, for power, and the privileges of their corps. their maxim is 'boni judicis est ampliare jurisdictionem,' and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective controul. the constitution has erected no such single tribunal knowing that, to whatever hands confided, with the corruptions of time & party it's members would become despots. it has more wisely[1] made all the departmen[ts] co-equal and co-sovereign within themselves. if the

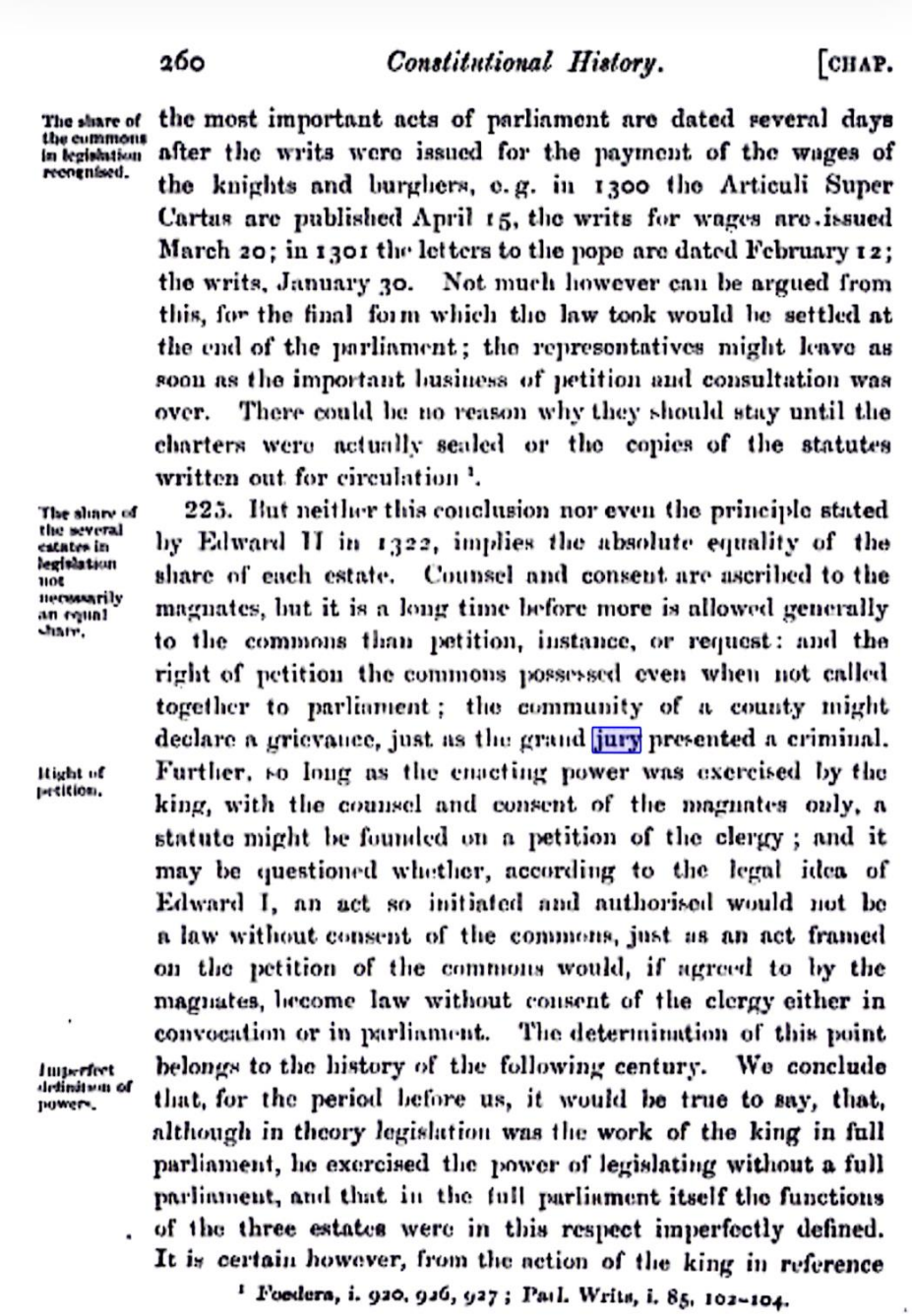
https://founders.archives.gov/documents/Jefferson/03-16-02-0234#:~:text=%26%20148.%20to%20consider%20the%20judges,men%2C%20and%20not%20more%20so.

Ancient Right of Trial By Jury=Grand Jury & Petit Jury

Grand Jury

[…and the right of petition the commons possessed even when not called together to parliament ; the community of a county might declare a grievance, just as the grand jury presented a criminal…]

[I would argue the community of a hundred, a village, a vil… not the "county"]



The share of the commons in legislation recognised.

the most important acts of parliament are dated several days after the writs were issued for the payment of the wages of the knights and burghers, e.g. in 1300 the Articuli Super Cartas are published April 15, the writs for wages are issued March 20; in 1301 the letters to the pope are dated February 12; the writs, January 30. Not much however can be argued from this, for the final form which the law took would be settled at the end of the parliament; the representatives might leave as soon as the important business of petition and consultation was over. There could be no reason why they should stay until the charters were actually sealed or the copies of the statutes written out for circulation [1].

The share of the several estates in legislation not necessarily an equal share.

225. But neither this conclusion nor even the principle stated by Edward II in 1322, implies the absolute equality of the share of each estate. Counsel and consent are ascribed to the magnates, but it is a long time before more is allowed generally to the commons than petition, instance, or request: and the right of petition the commons possessed even when not called together to parliament; the community of a county might declare a grievance, just as the grand jury presented a criminal.

Right of petition.

Further, so long as the enacting power was exercised by the king, with the counsel and consent of the magnates only, a statute might be founded on a petition of the clergy; and it may be questioned whether, according to the legal idea of Edward I, an act so initiated and authorised would not be a law without consent of the commons, just as an act framed on the petition of the commons would, if agreed to by the magnates, become law without consent of the clergy either in convocation or in parliament. The determination of this point belongs to the history of the following century. We conclude that, for the period before us, it would be true to say, that, although in theory legislation was the work of the king in full parliament, he exercised the power of legislating without a full parliament, and that in the full parliament itself the functions of the three estates were in this respect imperfectly defined. It is certain however, from the action of the king in reference

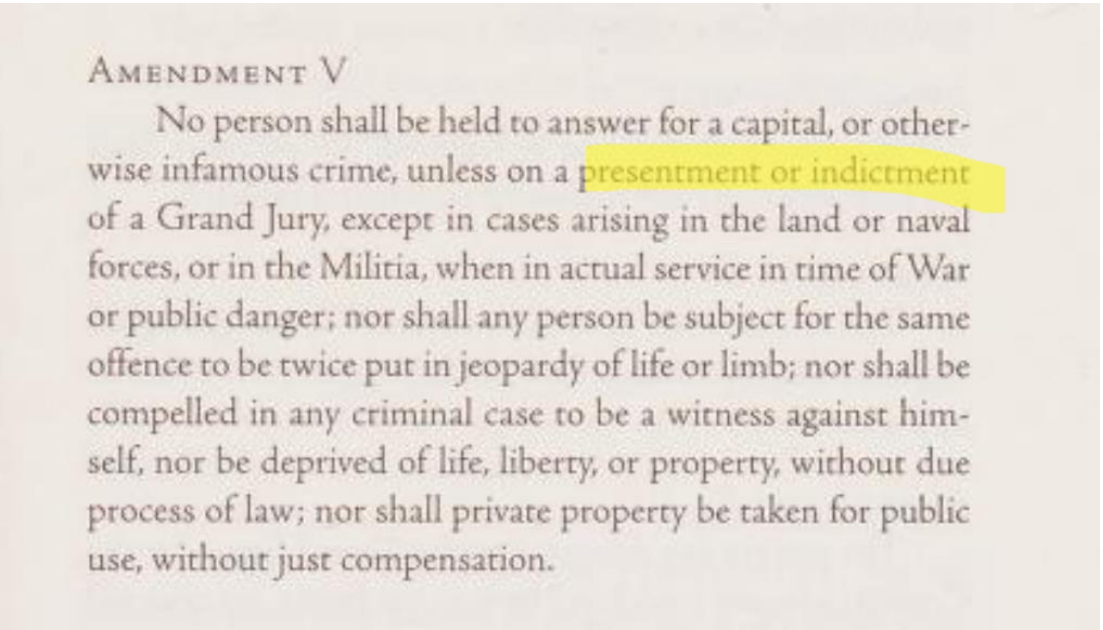
Imperfect definition of powers.

[1] Foedera, i. 920, 926, 927; Parl. Writs, i. 85, 102–104.

https://archive.org/details/in.ernet.dli.2015.47309/2015.47309.The-Constitutional-History-Of-England--Vol-2

AMENDMENT V No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against him- self, nor be deprived of life, liberty, or property, withour due process of law; nor shall private property be taken for public use, without just compensation.

Action popular, Is given upon the breach of some penal Statute, which every Man that will may sue for himself and the King, by information, or otherwise : and because this Action is not given to one especially but generally to any of the Kings people that will sue, it is called an Action popular…]



AMENDMENT V

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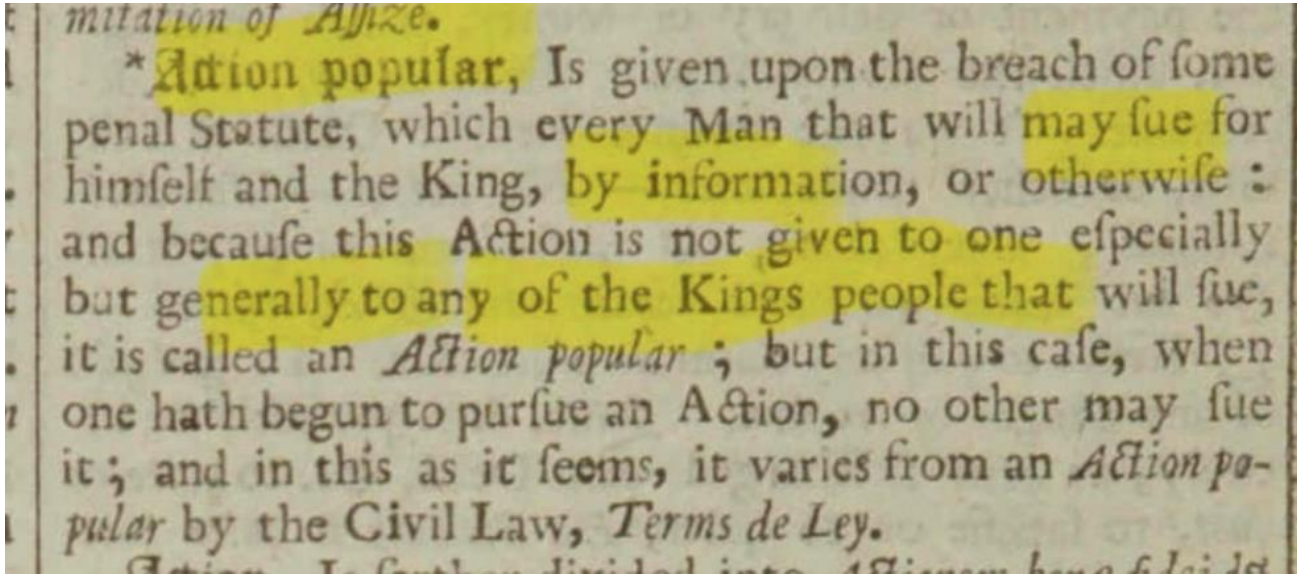
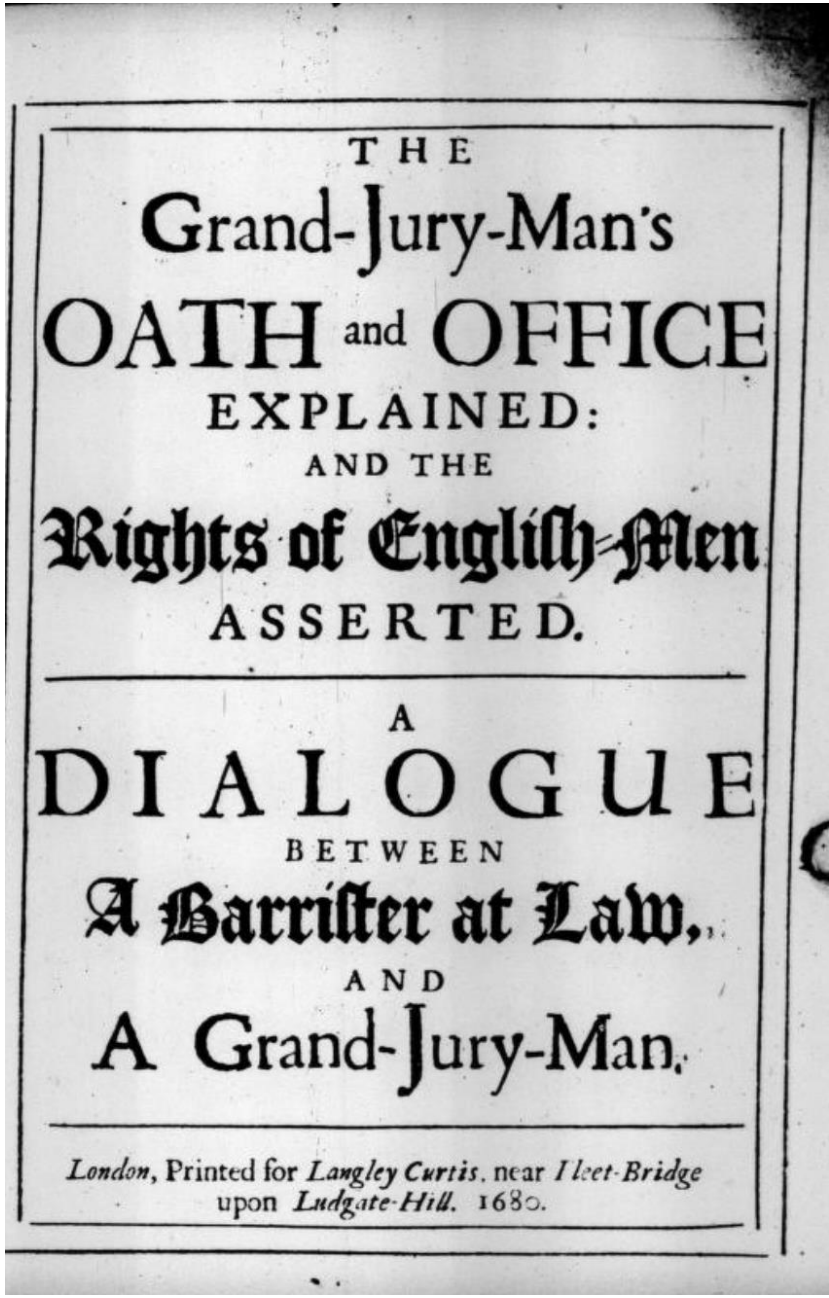


mitation of Aſſize.

*Action popular, Is given upon the breach of ſome penal Statute, which every Man that will may ſue for himſelf and the King, by information, or otherwiſe : and becauſe this Action is not given to one eſpecially but generally to any of the Kings people that will ſue, it is called an *Action popular* ; but in this caſe, when one hath begun to purſue an Action, no other may ſue it; and in this as it ſeems, it varies from an *Action popular* by the Civil Law, *Terms de Ley*.

The Grand-Jury-man's oath and office explained, ... 1680



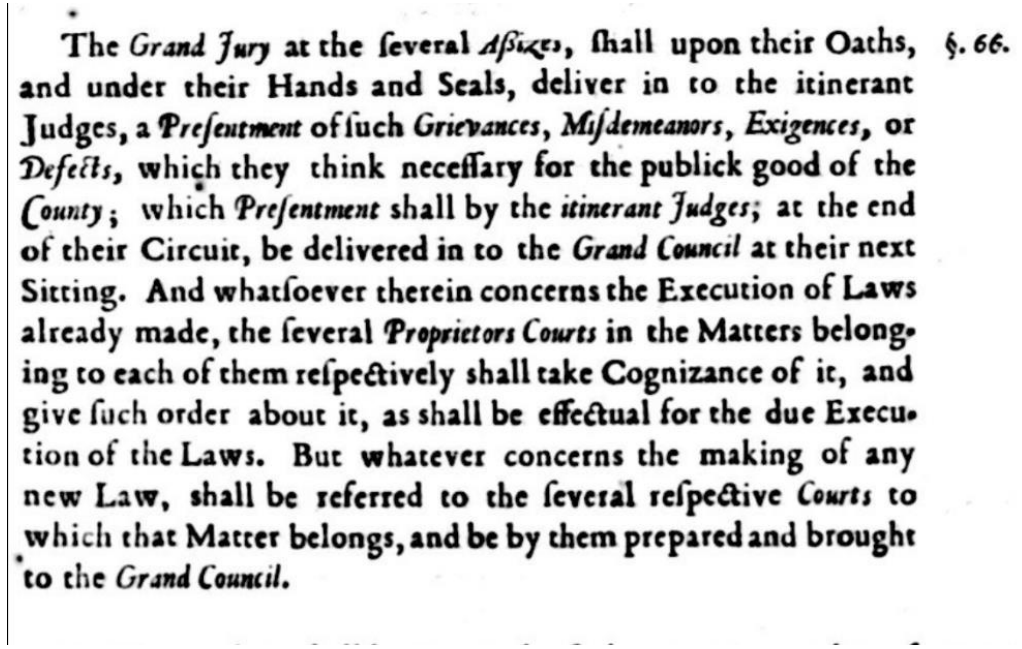
THE
Grand-Jury-Man's
OATH and OFFICE
EXPLAINED:
AND THE
Rights of English-Men
ASSERTED.

A
DIALOGUE
BETWEEN
A Barrister at Law,
AND
A Grand-Jury-Man.

London, Printed for *Langley Curtis*, near *Fleet-Bridge* upon *Ludgate-Hill*. 1680.

https://archive.org/details/bim_early-english-books-1641-1700_the-grand-jury-mans-oat_hawles-sir-john_1680

The Fundamental Constitutions of Carolina
1669
Pg. 14
§. 66
The Grand Jury at the several assizes, Shall upon their Oaths, and under their Hands and Seals, deliver in to the itinerant Judges, a Presentment of such Grievances, Misdemeanors, Exigencies , or Defects, which they think necessary for the publick good of the County ; which Presentment shall by the itinerant Judges; at the end of their Circuit, be delivered in to the Grand Council at their next Sitting. And whatsoever therein concerns the Execution of Laws already made, the several Proprietors Courts in the Matters belonging to each of them respectively shall take Cognizance of it, and give such order about it, as shall be effectual for the due Execution of the Laws. But whatever concerns the making of any new Law, shall be referred to the several respective Courts (legislature) to Raise to which the Matter belongs, and be by them prepared and brought to the Grand Council.



The *Grand Jury* at the ſeveral *Aſſizes*, ſhall upon their Oaths, §. 66.
and under their Hands and Seals, deliver in to the itinerant Judges, a *Preſentment* of ſuch *Grievances*, *Miſdemeanors*, *Exigences*, or *Defects*, which they think neceſſary for the publick good of the *County*; which *Preſentment* ſhall by the *itinerant Judges*; at the end of their Circuit, be delivered in to the *Grand Council* at their next Sitting. And whatſoever therein concerns the Execution of Laws already made, the ſeveral *Proprietors Courts* in the Matters belonging to each of them reſpectively ſhall take Cognizance of it, and give ſuch order about it, as ſhall be effectual for the due Execution of the Laws. But whatever concerns the making of any new Law, ſhall be referred to the ſeveral reſpective *Courts* to which that Matter belongs, and be by them prepared and brought to the *Grand Council*.

https://archive.org/details/fundamentalconst00caro

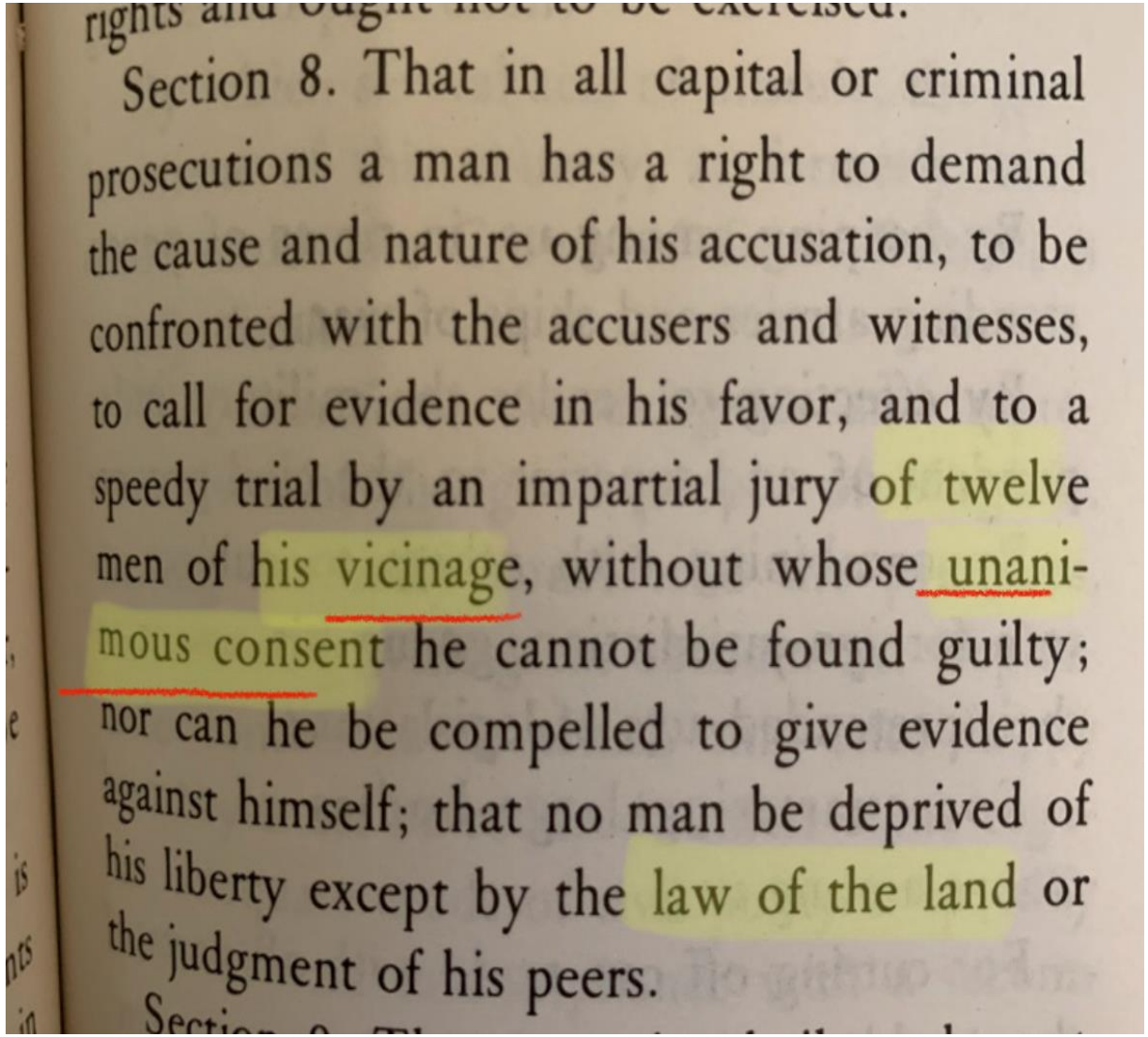
Petit Jury

Virginia Declaration of Rights (1776)

A **DECLARATION OF RIGHTS** made by the representatives of the good people of Virginia, assembled in full and free convention: which rights do pertain to them and their posterity, as the **basis and foundation of government.**

Sec. 8

That in all capital or criminal prosecutions a man has a right to demand the cause and nature of his accusation, to be confronted with the **accusers and witnesses**, to call for evidence in his favor, and to a speedy trial by an impartial jury of **twelve men** of his **vicinage**, without whose **unanimous** consent he **cannot be found guilty**; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the **law of the land** or the judgment of his **peers.**


rights and ought not to be exercised.

Section 8. That in all capital or criminal prosecutions a man has a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgment of his peers.

Section

The federal and state constitutions, colonial charters, and other organic laws of the state, territories, and colonies now or heretofore forming the United States of America : Thorpe, Francis Newton, 1909
https://archive.org/details/federalstatecons07thor

Pg.246

[...a jury, if it delivers a verdict at all, shall be unanimous...][...One advantage resulting from the rule no doubt is, that if any one juror dissents from the rest, his opinion and reasons must be heard and considered by them. They cannot treat these with contempt or indifference, for he has an absolute veto upon their verdict, and they must convince him or yield themselves unless they are prepared to be discharged without delivering any verdict at all....][..

Pg.255

The question of innocence or guilt as determined by the verdict of a jury does not admit of degree. We cannot therefore graduate the sentence according to the strength or weakness of the proof. The party is either guilty, and ought to be punished according to the nature of his offence, or not guilty, and ought to be set free...]

Pg.261

[..It has been strenuously maintained by some writers that the jury are entitled in all cases, where no special pleas have been put on the record, to give a general verdict^ according to their own view of the law, in criminal as well as civil cases. That is, supposing the action to be brought for a libel or an assault, or the indictment to charge a felony or a misdemeanor, and the only plea is not guilty, they assert that the jury are justified in bringing in a verdict of acquittal, notwithstanding they are told by the judge that in point of law there is no defence, provided they think otherwise themselves.

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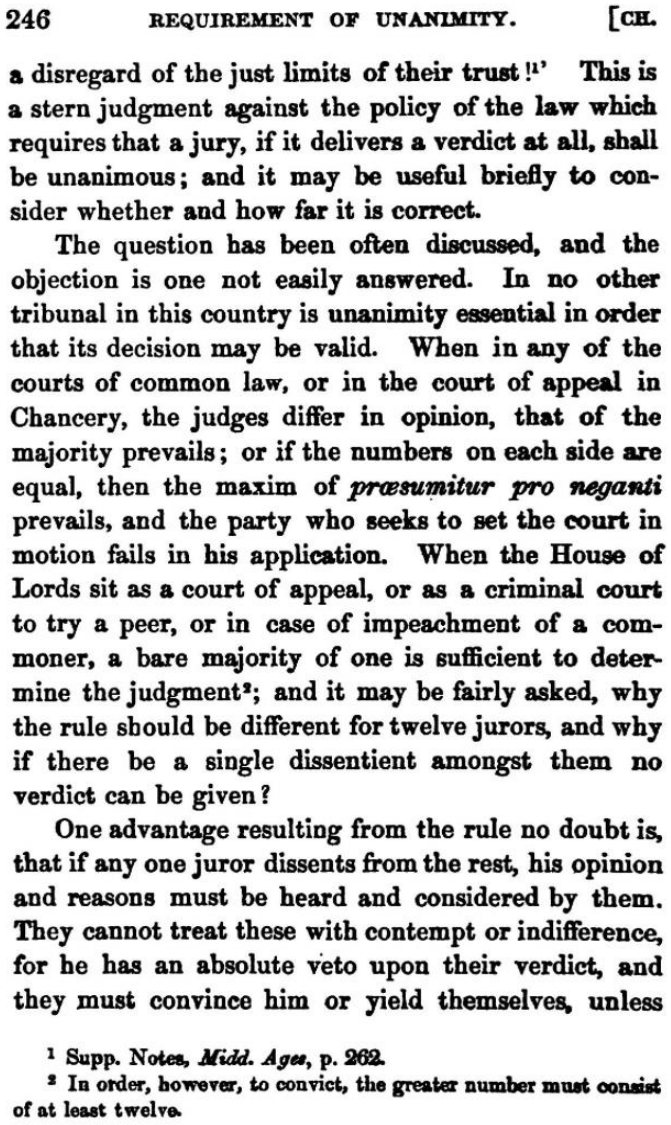


246 REQUIREMENT OF UNANIMITY. [CH.

a disregard of the just limits of their trust!'[1] This is a stern judgment against the policy of the law which requires that a jury, if it delivers a verdict at all, shall be unanimous; and it may be useful briefly to consider whether and how far it is correct.

The question has been often discussed, and the objection is one not easily answered. In no other tribunal in this country is unanimity essential in order that its decision may be valid. When in any of the courts of common law, or in the court of appeal in Chancery, the judges differ in opinion, that of the majority prevails; or if the numbers on each side are equal, then the maxim of *præsumitur pro negante* prevails, and the party who seeks to set the court in motion fails in his application. When the House of Lords sit as a court of appeal, or as a criminal court to try a peer, or in case of impeachment of a commoner, a bare majority of one is sufficient to determine the judgment[2]; and it may be fairly asked, why the rule should be different for twelve jurors, and why if there be a single dissentient amongst them no verdict can be given?

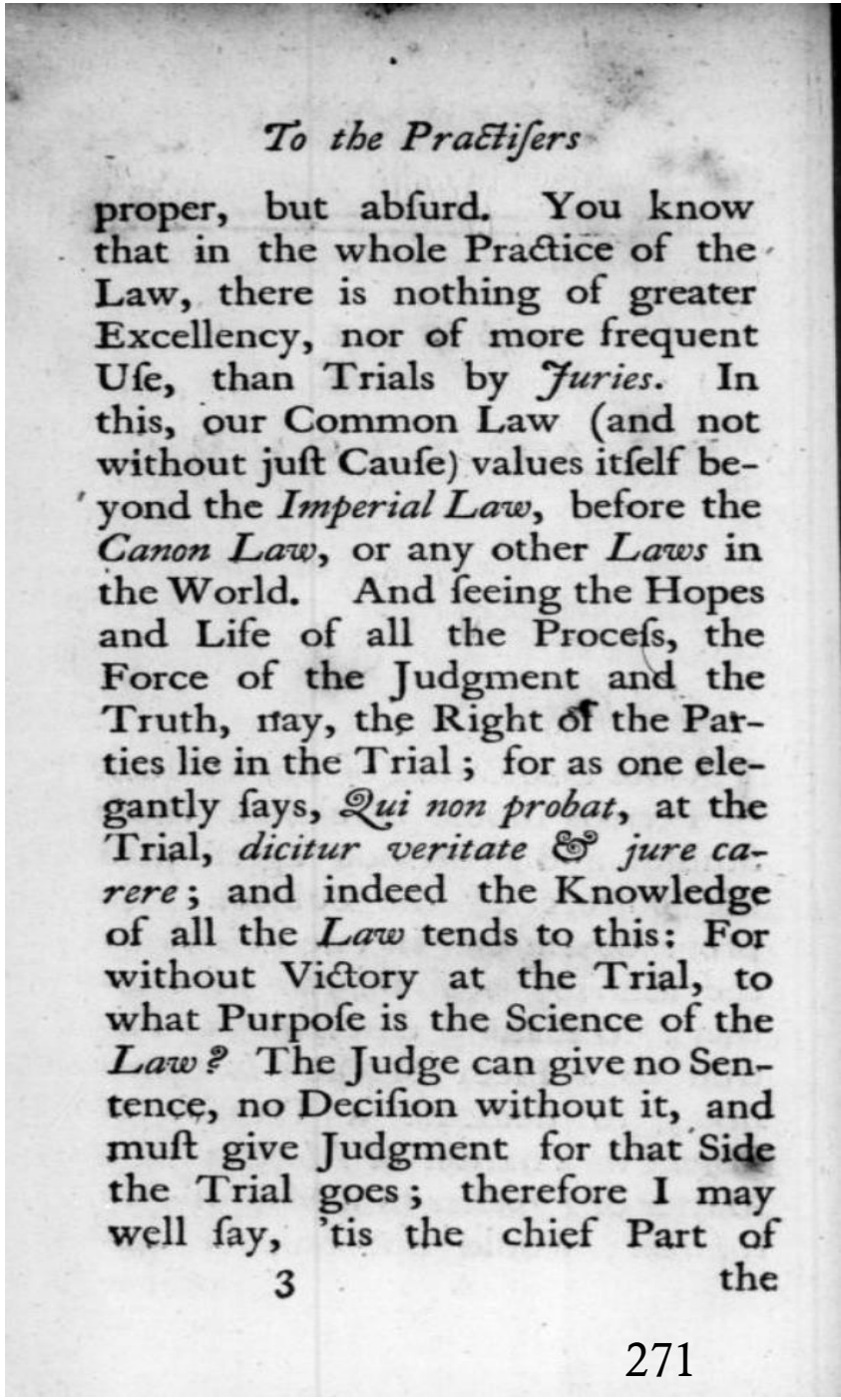
One advantage resulting from the rule no doubt is, that if any one juror dissents from the rest, his opinion and reasons must be heard and considered by them. They cannot treat these with contempt or indifference, for he has an absolute veto upon their verdict, and they must convince him or yield themselves, unless

[1] Supp. Notes, *Midd. Ages*, p. 262.

[2] In order, however, to convict, the greater number must consist of at least twelve.

In this, our **Common Law values itself** beyond the Imperial Law,
(and not without just Cause)
before the Canon Law,
or **any other Laws** in the World,
And seeing the Hopes and Life of all **the Process**, the Force of the Judgment and the Truth,
nay, the **Right of the Parties lie in the Trial**;
for as one elegantly says,
Qui non probat, at the Trial, dicitur veritate & jure carere;
[He who does not prove, at the Trial, is said to lack truth and justice] and indeed the Knowledge of all the Law tends to this: For **without Victory at the Trial, to what Purpose is the Science of the Law?**
The Judge can give no Sentence, no Decision without it, and must give Judgment for that Side the Trial goes;
therefore I may well say, tis the chief Part of the Practice of the Law..]

Trials per pais: or, the law of England concerning juries by nisi prius, &c. With a compleat treatise of the law of evidence, ... The eighth edition, with large additions. ... Originally compiled by Giles Duncomb, ... and continued by a careful hand. In two volumes
https://archive.org/details/bim_eighteenth-century_trials-per-pais-or-the_eure-samson-sir_1766_1



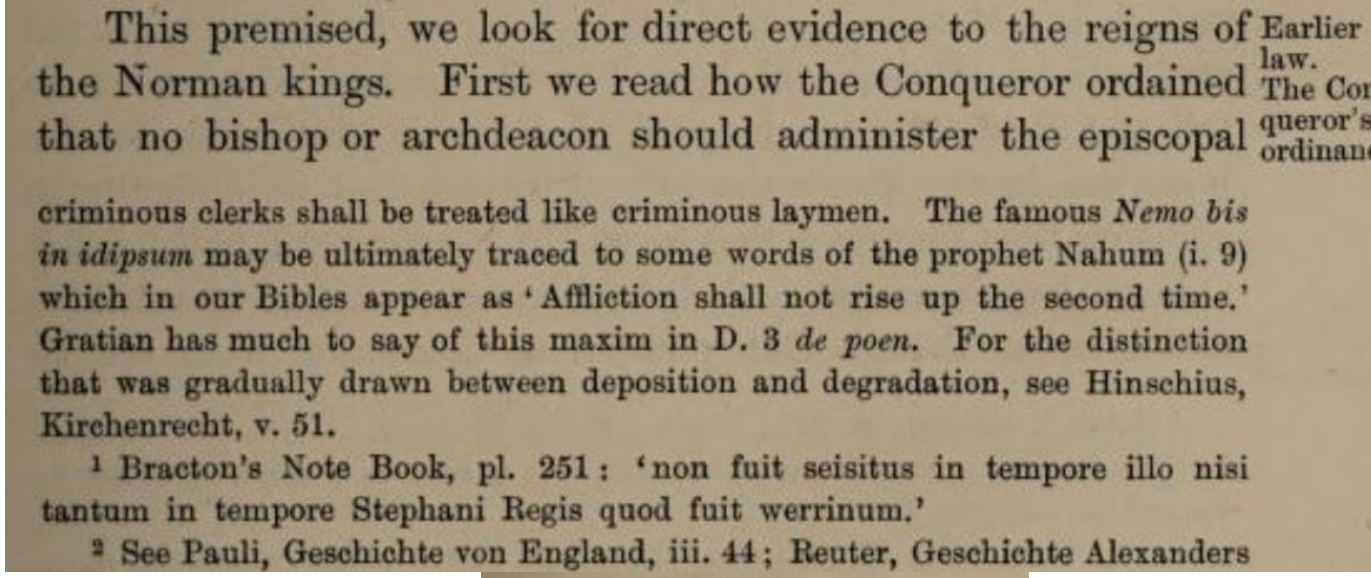
To the Practisers

proper, but absurd. You know that in the whole Practice of the Law, there is nothing of greater Excellency, nor of more frequent Use, than Trials by *Juries*. In this, our Common Law (and not without just Cause) values itself beyond the *Imperial Law*, before the *Canon Law*, or any other *Laws* in the World. And seeing the Hopes and Life of all the Process, the Force of the Judgment and the Truth, nay, the Right of the Parties lie in the Trial; for as one elegantly says, *Qui non probat*, at the Trial, *dicitur veritate & jure carere*; and indeed the Knowledge of all the *Law* tends to this: For without Victory at the Trial, to what Purpose is the Science of the *Law?* The Judge can give no Sentence, no Decision without it, and must give Judgment for that Side the Trial goes; therefore I may well say, 'tis the chief Part of

3 the

Sed scriptae nunquam prius fuerant, nee omnino fuerant in regno hae consuetudines.?
[But these customs had never been written before, nor had they been at all in the kingdom.]
~~~~~<<<>>>~~~~~
Nemo bis in idipsum

[No one is twice in the same place] may be ultimately traced to some words of the prophet Nahum (i. 9) which in our Bibles appear as 'Affliction shall not rise up the second time.'



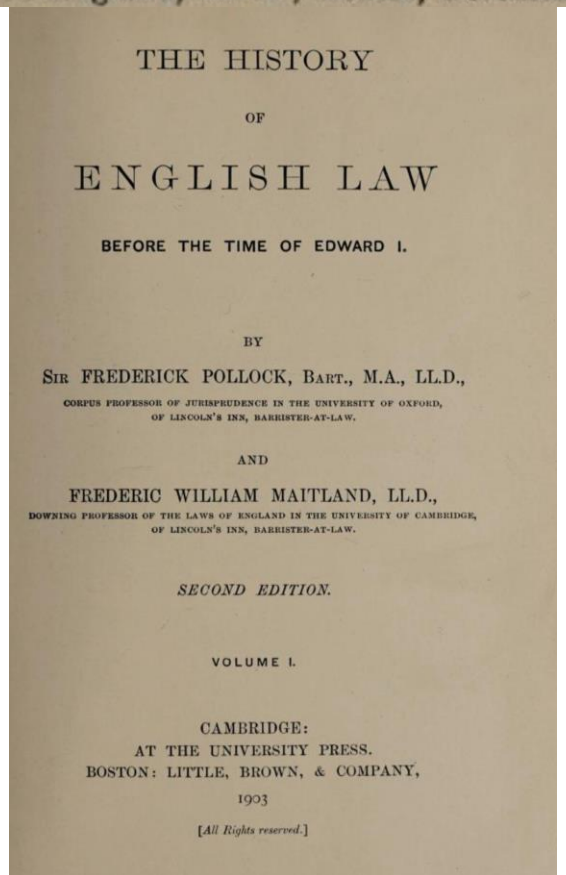
This premised, we look for direct evidence to the reigns of the Norman kings. First we read how the Conqueror ordained that no bishop or archdeacon should administer the episcopal

Earlier law. The Con queror's ordinan

criminous clerks shall be treated like criminous laymen. The famous *Nemo bis in idipsum* may be ultimately traced to some words of the prophet Nahum (i. 9) which in our Bibles appear as 'Affliction shall not rise up the second time.' Gratian has much to say of this maxim in D. 3 *de poen.* For the distinction that was gradually drawn between deposition and degradation, see Hinschius, Kirchenrecht, v. 51.

[1] Bracton's Note Book, pl. 251: 'non fuit seisitus in tempore illo nisi tantum in tempore Stephani Regis quod fuit werrinum.'

[2] See Pauli, Geschichte von England, iii. 44; Reuter, Geschichte Alexanders



THE HISTORY

OF

ENGLISH LAW

BEFORE THE TIME OF EDWARD I.

BY

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VOLUME I.

CAMBRIDGE:
AT THE UNIVERSITY PRESS.
BOSTON: LITTLE, BROWN, & COMPANY,
1903

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https://archive.org/details/historyofenglish01poll
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A quick definition of hundredor:

A hundredor is a person who has a special role in a hundred court. This court was used a long time ago to settle disputes and make decisions in a certain area called a hundred. A hundredor could be a freeholder who could act as a judge, a person who could be on a jury, an officer who held the court, or a bailiff.

HUND'REDTH, *adjective* The ordinal of a hundred.

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HUND'REDTH, *adjective* The ordinal of a hundred.

Hundred-court

HUND'RED-COURT, *noun* In England, a court held for all the inhabitants of a hundred.

[…The individual is to take his trial among strangers, friendless and unsupported, without its being known whether he is habitually a good or a bad man…][…All these inconveniences are avoided by the present important restriction, that the cause shall be tried by a jury of the vicinity, and tried in the county where the offence was committed….]

Notice The distinction between vicinage and county…. 12 Men who know if he is habitually good or bad.

of transporting witnesses incurred. The individual is to take his trial among strangers, friendless and unsupported, without its being known whether he is habitually a good or a bad man; and consequently with one essential circumstance wanting by which to determine whether the action was performed maliciously or accidentally. All these inconveniences are avoided by the present important restriction, that the cause shall be tried by a jury of the vicinity, and tried in the county where the offence was committed. But by the proposed *derangement*, I can call it by no softer name, a man must be ruined to prove his innocence. This is far from being a forced construction of the proposed form. The words appear to me not intelligible, upon the idea that it is to be a *system* of government, unless the construction now given, both for civil and criminal processes, be admitted. I do not say that it is intended that all these changes should take place within one year, but they probably will in the course of half a dozen years, if this system is adopted. In the meantime we shall be subject to all the horrors of a divided sovereignty, not knowing whether to obey the Congress or the State. We shall find it impossible to please two masters. In such a state frequent broils will ensue. Advantage will be taken of a popular commotion,

https://archive.org/details/essaysonconstitu00forduoft

The assise was resorted to in other questions, besides those regarding seisin ; as, whether a tenement was a frdum ecclesiasticum vel laicum, or whether a person was a minor or of age, and other matters of a similar description, which, as they arose in the court when the parties were present, might, with the advice and consent of the court, be so determined. But the number of the jurors in those assizes, was not the same as in the grand assize, not being, in some Cases, more than eight. They were likewise chosen by the sheriff, and were not necessarily of the condition of knights. As to the time of limitation within which the assine might he brought, it is said in the writs given by Glanville, to have boen since the last voyage of the king into Normandy, which took place A. D. 1184, in the 30th year of the reign of Henry II.;

but it appears that the time of limitation was not then fixed, and might therefore be sometimes greater and sometimes less.

The trial by jury, in the modern sense of the word, was now partially applied to criminal matters, for it was directed by the Constitution of Clarendon, that should nobody appear to accuse an offender before the archdiscon, then the sheriff, at the request of the bishop,

" faciet jurare duo- decim legales homincs de vicineto seu de villa, quod inde veritatem sccundum conscientiam suam manifestabunt."
[He will make twelve legal men from the neighborhood or the town to swear, that they will then reveal the truth of their hidden conscience]

This mode of trial was then said to be per juratam patrie seu vicincti, per inquisitionem vel per juramentum legalium hominum.
[by the oath of the country or district, by the inquiry or by the oath of legal men]
This is first mentioned in the laws of Henry I. As a discouragement of the duel in criminal suits : it appears that a different judgment followed
a conviction per legem apparentem, that is, by the old Saxon modes of trial, and that, by the duel; felon who failed to purge 275 himself, only suffered the pains of death; but if conquered in the duel, he sufered the additional penalty of the forfeiture of all his

The right of trial by jury, in all criminal cases, had been secured by the Constitution, as originally framed; but so highly was this right esteemed by the people, that they were unwilling to allow the possibility of its being encroached upon, even in civil cases; and, therefore added this amendment.
The latter part of it is to
prevent the infringement of this right…]
[…The common law, referred to in this, and other parts of the Constitution, is the common law of England, whence, in a great measure, the principles of American jurisprudence are derived.
https://archive.org/details/abriefexpositio00bayagoog

right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law." The right of trial by jury, in all criminal cases, had been secured by the Constitution, as originally framed; but so highly was this right esteemed by the people, that they were unwilling to allow the possibility of its being encroached upon, even in civil cases; and, therefore added this amendment. The latter part of it is to prevent the infringement of this right, by the judges taking upon themselves, in any case, the power to decide upon matters of fact, which have been settled by a jury. The only proper mode of re-examining such questions, is by submitting them to another jury, by means of a new trial. The *common law*, referred to in this, and other parts of the Constitution, is the common law of England, whence, in a great measure, the principles of American jurisprudence are derived.

Hundreders, Hundredcourt, wapentake, Wapentachium,Wapentachii, bailiff (bailer)

De laudibus legum Angliae-1470-Fortesque:
were first inftituted by K. A1fred ,- about the year DCCC. LXXX.
Pg. 117, Pg.120, Pg. 232, Pg. 281, Pg.329, Pg. 330, Pg. 332, Pg. 379, Pg. 415, Pg. 423, Pg. 434, Pg. 436,

De legibus et consuetudinibus Angliæ-1235-Bracton:
Pg.22, Pg.23,

HUND'REDER, *noun* In England, a man who may be of a jury in any controversy respecting land within the hundred to which he belongs.
1. One having the juriscition of a hundred.

HUND'RED, *noun* A collection, body or sum, consisting of ten times ten individuals or units; the number 100.
1. A division or part of a county in England, supposed to have originally contained a *hundred* families, or a *hundred* warriors, or a *hundred* manors. [But as the word denotes primarily a circuit or division, it is not certin that Alfred's divisions had any reference to that number.]
WAPENTAKE, WAPENTAC, *noun...] [*In some northern counties of England, a division or district, answering to the hundred or cantred in other counties. The name was first given to the meeting, supra.

BA'ILER
BA'ILIFF, *noun* [Heb.lord, chief.] In England, an officer appointed by the sheriff. Bailiffs are either special, and appointed, for their adroitness, to arrest persons; or bailiffs of hundreds, who collect fines, summon juries, attend the assizes, and execute writs and process. The sheriff in England is the king's bailiff.
There are also bailiffs of liberties, appointed by the lords in their respective jurisdictions, to execute process, and perform other duties; bailiffs of forests and manors, who direct the husbandry, collect rents, etc.; and water bailiffs in each port, to search vessels, gather toll for anchorage, arrest persons for debt on the water, etc.
The office of bailiff formerly was high and honorable in England, and officers under that title on the continent are still invested with important functions.

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https://archive.org/details/bractononlawscus0001brac

4thly, The law and legislation of every dominion equally subjects all persons and property within the limits there of and is the true rule for the decision of all questions which arise there...]

[Compare to verbiage in the 11th session Territory of Idaho 1881]

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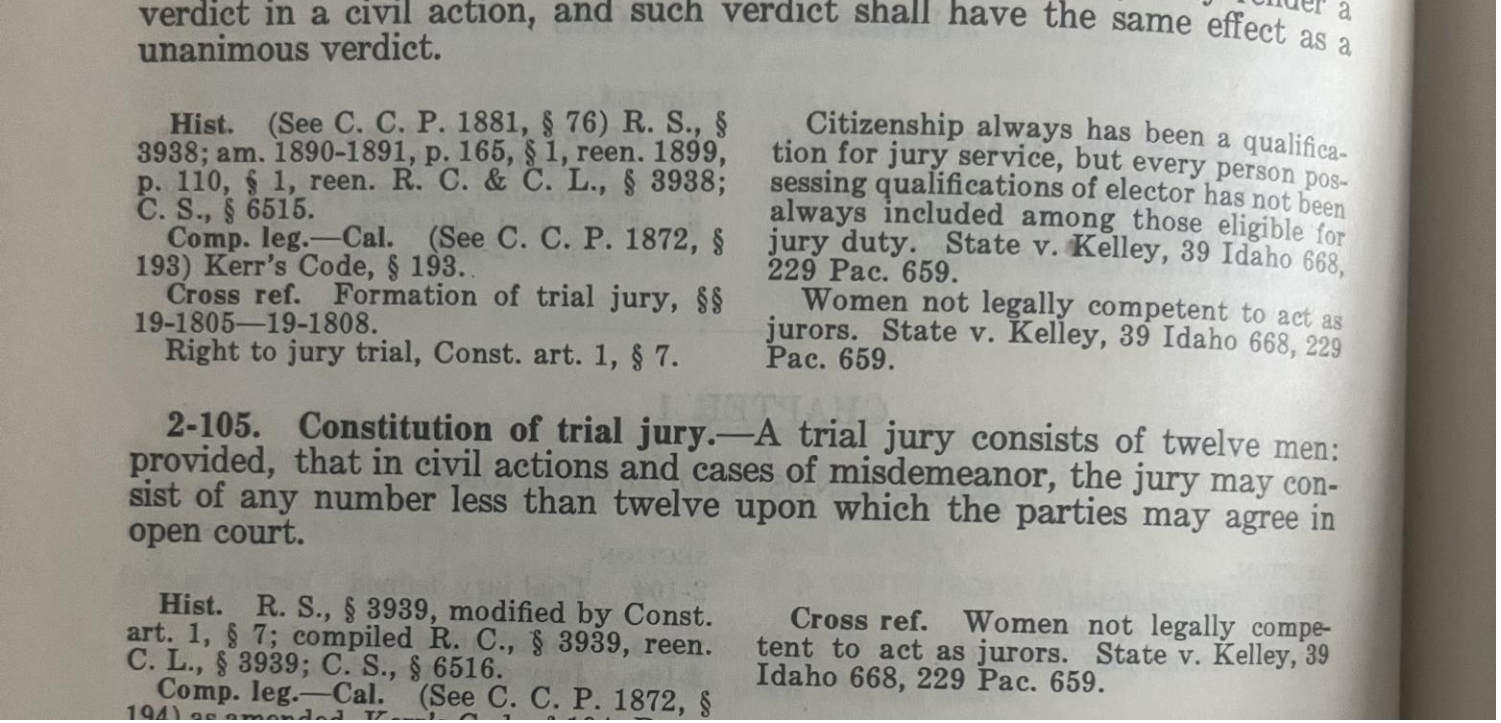
Laws of a conquered country continue until they are altered by the conquerer

adly, The conquered inhabitants once received into the conquerors protection become fubjects; and are univerfally to be confidered in that light, not as enemies or aliens.

Articles of capitulation upon which the conquest is surrendered, and treaties of peace by which it is ceded are sacred and inviolable, according to their true intent.

4thly, The law and legislation of every dominion equally subjects all persons and property within the limits there of and is the true rule for the decision of all questions which arise there



verdict in a civil action, and such verdict shall have the same effect as a unanimous verdict.

Hist. (See C. C. P. 1881, § 76) R. S., § 3938; am. 1890-1891, p. 165, § 1, reen. 1899, p. 110, § 1, reen. R. C. & C. L., § 3938; C. S., § 6515.

Comp. leg.—Cal. (See C. C. P. 1872, § 193) Kerr's Code, § 193.

Cross ref. Formation of trial jury, §§ 19-1805—19-1808.

Right to jury trial, Const. art. 1, § 7.

Citizenship always has been a qualification for jury service, but every person possessing qualifications of elector has not been always included among those eligible for jury duty. State v. Kelley, 39 Idaho 668, 229 Pac. 659.

Women not legally competent to act as jurors. State v. Kelley, 39 Idaho 668, 229 Pac. 659.

2-105. Constitution of trial jury.—A trial jury consists of twelve men: provided, that in civil actions and cases of misdemeanor, the jury may consist of any number less than twelve upon which the parties may agree in open court.

Hist. R. S., § 3939, modified by Const. art. 1, § 7; compiled R. C., § 3939, reen. C. L., § 3939; C. S., § 6516.

Comp. leg.—Cal. (See C. C. P. 1872, §

Cross ref. Women not legally competent to act as jurors. State v. Kelley, 39 Idaho 668, 229 Pac. 659.

"Idaho Code, 1935
-105 Constitution of trial jury.-A trial jury consists of twelve men: provided, that in civil actions and cases of misdemeanor, the jury may consist of any number less than twelve upon which the parties may agree in open court.

1907

The Owyhee Nugget, Silver City, Idaho, 1908-01-03

First Woman Jury Impaneled at De Lamar

The Weiser Signal copies a dispatch from Denver, reading as follows:

Dec. 21. [1907] – It took six good women and true just ten minutes in Justice Carlon's court to find for plaintiff in the now celebrated case of Victor Porel against Mrs. James W. Wallwork. Besides being the first case ever tried before a woman jury, first in all the history of the world, the action had other highly interesting features.

https://yellowpinetimes.wordpress.com/2019/07/28/idaho-history-july-28-2019/

SPIRIT OF LAW
BARON DE MONTESQUIEU
IN TWO VOLUMES*
VOL. 1, CHPT. III.

In what Governments, and in what Cases the Judges ought to determine according to the express Letter of the Law.

The nearer a government approaches to a republic, the more the manner of judging becomes settled and fixed.

Wherefore it was a fault in the republic of Sparta, for the Ephori to pass such arbitrary judgments, without having any laws to direct them. The first consuls at Rome pronounced sentence in the fame manner as the Ephori ; but the inconveniency of this proceeding was soon felt, and they were obliged to have recourse to express and fixed laws.

In despotic governments there are no laws ; the judge himself is his own rule.

There are laws in monarchies and where these are explicit, the judge conforms to them where they are otherwise, he endeavours to follow their spirit.

In republics the very nature of the constitution requires the judges to keep to the letter of the law. Here there is no citizen against whom a law can be interpreted, in cafes where either his honour, property, or life is concerned.

Chpt. 3 -Of Laws -Pg. 80

In England the jury determine whether the fact brought under their cognizance be proved or not ; if it be proved, the judge pronounces the punishment inflicted by the law for such a particular fact,, and for this he needs only open his eyes.

CHAP. IV -Of the Manner of forming Judgments. -Pg. 81

HENCE arise the different manners of forming judgments.

In monarchies the judges take the method of arbiters; They deliberate together, they communicate their thoughts in order to come to an agreement, they moderate their opinion to render it conformable to that of others; and the sentiments of the fewest must yield to those of two thirds of the whole number.

But this is not agreeable to the nature of a republic.

At Rome, and in the cities of Greece, The judges never entered into a consultation; each gave his own opinion in one of these three ways,\
I absolve, I condemn, It
Does not appear clear to me: this was because the people judged, or were supposed to judge.

But the people are far from being civilians; all chief modifications of arbitration are above their reach ; they must have only one object, and one single fact set before them; and then they have only to see whether they ought to **condemn**, to **acquit**, or to **suspend** their judgment.

The Romans introduced set forms for actions after the example of the Greek, and established a rule that each cause should be directed by its proper action.

This was necessary in their manner of judging ; it was necessary to
fix the state of the question, that the people might have it always before their eyes. Otherwise in a long process, this state of the question would continually change, and be no longer distinguished.

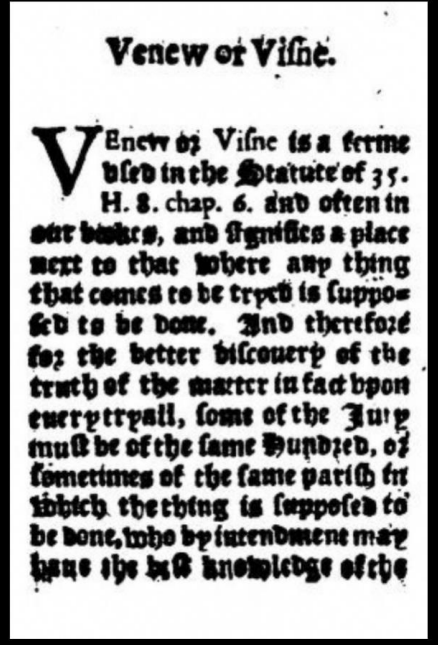
Pg. 82

Hence it followed, that the Roman judges granted only the simple demand, without making any addition, deduction, or limitation.

But the prators devised other forms for actions, which were called ex bona fide, where the method of pronouncing sentence was left more to the disposition of the judge.

This was more agreeable to the
Spirit of Monarchy.

Hence it is a saying among
the French lawyers, That in France
all actions are EX BONA FIDE.



Venew or Viſne.

Venew or Viſne is a terme uſed in the Statute of 35. H. 8. chap. 6. and often in our bookes, and ſignifies a place next to that where any thing that comes to be tryed is ſuppoſed to be done. And therefore for the better diſcovery of the truth of the matter in fact upon every tryall, ſome of the Jury muſt be of the ſame Hundred, or ſometimes of the ſame pariſh in which the thing is ſuppoſed to be done, who by intendment may have the beſt knowledge of the matter

Venew (venue) or Visne
Is a terme in the Statute of 35 Henry 3 chapter 6 and often in

H.8. chap. 6. dab often in our bookes , and signifies a place next to that where anything that comes to be tryed is supposed to be done. And therefore for the better discovery for the truth of the matter in fact upon every tryall.
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Coke

Les termes de la ley, or, Certaine difficult and obscure words and termes of the common lawes and statutes of this realme now in use expounded and explained
John Rastell
1536

https://archive.org/details/lestermesdelale00unkngoog

BLACKSTONE'S COMMENTARIES, ED. 2ND
By Samuel Warren-1856
Pg 569-571

And in every country on the continent, as the trial **by the peers** has been gradually disused, so the nobles have increased in power, till the state has been torn to pieces by rival factions, and. oligarchy in effect has been established, though under the shadow of regal government, unless where the miserable commons have taken shelter under absolute monarchy, as the lighter evil of the two.

It therefore, upon the whole, a duty which every man owes to his country, his friends, his posterity, and himself, to maintain, to the utmost "of his "power, this valuable institution, in all its **rights**; to restore it to its **ancient dignity...][...**to guard with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which, under a variety of plausible pretenses, may in time imperceptibly undermine this **best preservative of English liberty**.

[... devices are being more and more resorted to, for the purpose of referring disputed facts to the judges, by affidavits, or to arbitrators...][**In England, in both civil and criminal cases, the verdict of the jury must be unanimous…]**

https://archive.org/details/in.ernet.dli.2015.511599

being lawyers, but believing as men believe, and act on their belief, in the ordinary affairs of life, give them a capacity of aiding the court, in the eliciting of truth, which no single judge, be he ever so largely gifted with mental endowments, be he ever so learned with respect to past experience in such matters, can possess in dealing with either of those two matters."

[In England, in both civil and criminal cases, the verdict of the jury must be unanimous; in Scotland, the verdict may, in a criminal case, be pronounced by a majority, the jury consisting of fifteen; but of twelve in civil cases, unanimity being then, also, required, till lately, as in England. It was enacted, however, in the year 1854, by statute 17 & 18 Vict. c. 59, with reference to Scotland, that if, in a civil cause, the jury cannot agree; and if, after having been kept in deliberation for six hours, nine shall agree, their verdict may be received as that of the jury, and have the same force as an unanimous verdict:—and during the six hours, they may be furnished, by leave of the judge, with necessary refreshments. These changes were at the same time sought to be introduced into the English trial by jury in civil cases, but ineffectually; and the policy of the innovation is gravely questionable.

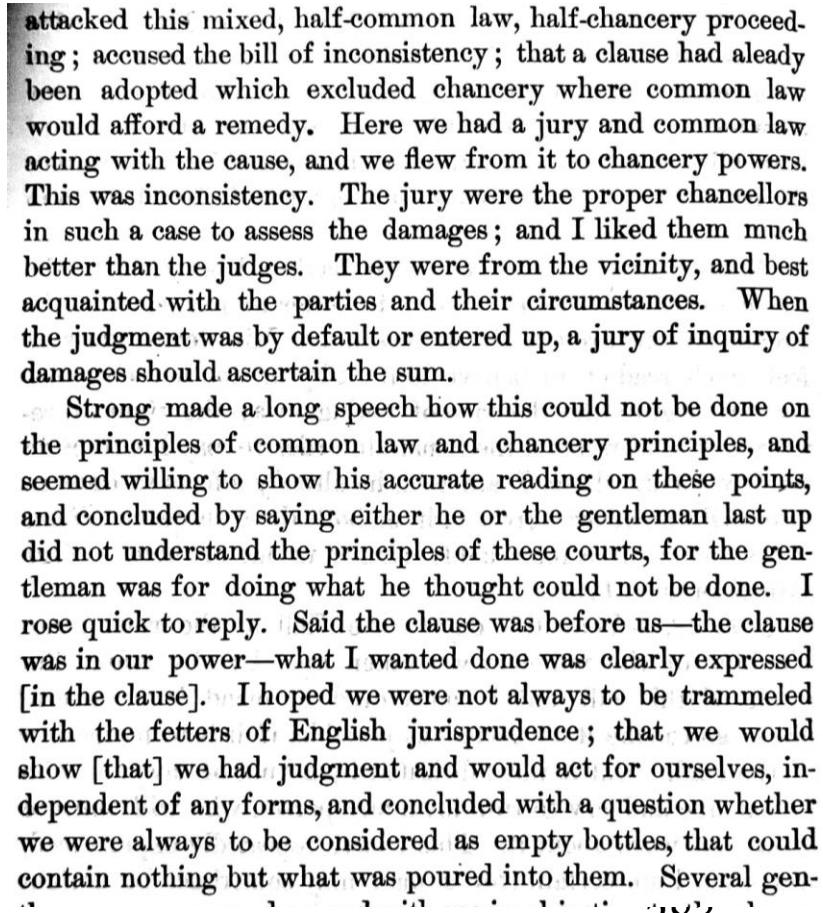
[In the year 1825, the laws relative to the qualification and summoning of juries, and the formation of juries, in England and Wales, being found very numerous and complicated, they were consolidated and simplified by statute 6 Geo. IV. c. 50. The first and second sections contain respectively the qualifications of jurors, and exemptions from serving on them.

202

[...**I attacked this mixed, half-common law, half-chancery proceeding; accused the bill of inconsisteney**; that a clause had aleady been adopted which excluded chancery where common law would afford a remedy. Here we had a jury and common law acting with the cause, and we flew from it to chancery powers. This was inconsistency. **The jury were the proper chancellors in such a case to assess the damages; and I liked them much better than the judges.**
They were from the vicinity, and best acquainted with the parties and their circumstances. When
the judgment was by default or entered up, a jury of inquiry of
damages should ascertain the sum.
Strong made a long speech how this could not be done on the principles of common law and chancery principles, and seemed willing to show his accurate reading on these points, and concluded by saying either he or the gentleman last up did not understand the principles of these courts, for the gentleman was for doing what he thought could not be done.
I rose quick to reply. Said the clause was before us the clause
was in our power--what I wanted done was clearly expressed
[in the clause]. I hoped we were not always to be trammeled with the fetters of English jurisprudence; that we would show [that] we had judgment and would act for ourselves, independent of any forms, and concluded with a question whether we were always to be considered as empty bottles, that could contain nothing but what was poured into them. Several gentlemen now rose and agreed with me in objecting to the clause.
But there seemed some difficulty in amending, and it was postponed for amendment.

Journal of William MaclayUnited States senator from Pennsylvania, 1789-1791 Pg.98

https://archive.org/details/cu31924030423796



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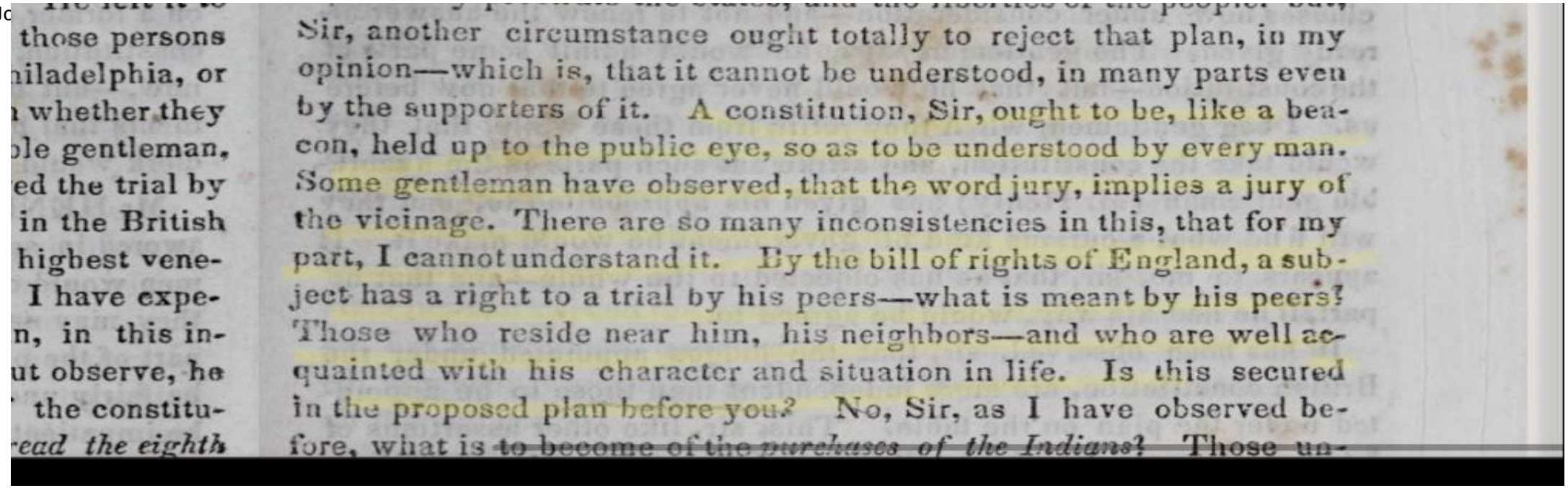
Trial by Jury of the vicinage vs Peers and unanimous consent civil and criminal

[A constitution, Sir, ought, to be, like a beacon, held up to the public eye, so as to be understood by every ma n. Some gentleman have observed, that the word **jury**, implies a **jury of the vicinage**. There are so many inconsistencies in this, that for my part, I cannot understand it. By the **bill of rights of England**, a subject has a **right** to a **trial by his peers**-— what is meant by his peers? **Those who reside near him**, **his neighbors**- — and who are **well acquainted with his character and situation in life**. Is this secured in the proposed plan before you?]

Vol. 3 -34 (Pg. 525)

https://archive.org/details/debatesofseveral03unse

The debates of the several state conventions on the adoption of the federal Constitution, as recommended by the general convention at Philadelphia, in 1787. Together with the Journal of the federal convention, Luther Martin's letter, Yates' minutes, Congressional opinions, Virginia and Kentucky resolutions of '98-'99, and other illustrations of the Constitution ... 2d ed., with considerable additions : Elliot, Jo



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highest vene-
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n, in this in-
ut observe, he
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read the eighth

Sir, another circumstance ought totally to reject that plan, in my opinion—which is, that it cannot be understood, in many parts even by the supporters of it. A constitution, Sir, ought to be, like a beacon, held up to the public eye, so as to be understood by every man. Some gentleman have observed, that the word jury, implies a jury of the vicinage. There are so many inconsistencies in this, that for my part, I cannot understand it. By the bill of rights of England, a subject has a right to a trial by his peers—what is meant by his peers? Those who reside near him, his neighbors—and who are well acquainted with his character and situation in life. Is this secured in the proposed plan before you? No, Sir, as I have observed before, what is to become of the *purchases of the Indians*? Those un-

The Americans, after the occupation of California in 1846, revived the alcalde system. Wherever a group of Americans collected, they proceeded to elect an American alcalde [7] who served as an adjuster of disputes and an administrator of the few local regulations. [illegible]ases involving the more serious criminal offenses, difficulties arose. When a regularly appointed judge was not available the miners frequently tried the cases by a jury without a judge. These "miner's courts" had the advantage of quickly and finally disposing of the cases. The administration of justice in the more remote mining districts appears to have been about as primitive and in many respects very similar to the administration of justice by the petty chiefs and "hundred courts" among the early Saxons.

The Law Which Was Administered

It was very seriously doubted at that time by the majority of the settlers,

https://www.senate.ca.gov/sites/senate.ca.gov/files/the_constitutions_of_california_and_the_united_states2.pdf#page13

The Engliſh Mans Right, &c.

Barriſter.

MY old *Client!* a good morning to you, whither ſo faſt? you ſeem intent upon ſome important affair?

Juryman, Worthy Sir! I am glad to ſee you thus *opportunely*, there being ſcarce any Perſon that I could at this time rather have wiſht to meet with.

Barr. I ſhall eſteem my ſelf happy, if in any thing I can ſerve you. --- The *buſineſs* I pray?

Juryman, I am ſummon'd to appear *upon a Jury*, and was juſt going to try if I could get off. Now I doubt not but you can put me into the beſt way to obtain that favour.

Barr. 'Tis probable I could. But firſt let me know the *reaſons* why you deſire to *decline that ſervice.*

Juryn. You know, Sir, there is ſomething of *trouble* and *loſs of time* in it; and mens *Lives, Liberties,* and *Eſtates* (which depend upon a Jury's *Guilty*, or *Not Guilty*, for the Plaintiff, or for the Defendant) are *weighty things.* I would not wrong my Conſcience for a world, nor be acceſſary to any mans ruin. There are others *better skill'd* in ſuch matters. I have ever lov'd *peace*; that I have forborn going to Law,

 The Jury mans

(as you well know many times) though it hath been much to my loſs.

Barr. I commend your *tenderneſs* and *modeſty*; yet muſt tell you, theſe are but general and *weak* excuſes. As for your trouble, 'tis not *much*; and however can be better ſpent than in doing *Juſtice*, and ſerving your Country? To withdraw your ſelf in ſuch caſes, is a kind of *Sacriledg*, robbing of the publick of thoſe duties which you juſtly owe it; the more *peaceable* man you have been, the *more fit* you are. For the office of a *Jury-man* is, *conſcientiouſly* to *judg his neighbour*; and neither no more *Law* than is eaſily learnt to direct him therein. I look upon you therefore as a man well-qualified with *eſtate, diſcretion* and *integrity*; and if all ſuch as you, ſhould uſe private means to avoid it, how would the King and Country be honeſtly ſerved? At that rate we ſhould have none but *Fools* or *Knaves* intruſted in this grand concern, on which (as you well obſerve) the Lives, Liberties, and Eſtates of all *Engliſhmen* depend.

Your *Tenderneſs* not to be acceſſary to any mans being wrong'd or ruin'd, is (as I ſaid) much to be commended. But may you not incur it unawares, by ſeeking thus to *avoid* it? *Pilate* was not innocent becauſe he waſht his hands, and ſaid, *He would have*

Trial By Jury In Idaho

Section 7.
The [Ancient] right of trial by jury shall remain inviolate:
BUT....]

INVI'OLATE, *adjective* [Latin inviolatus.] Unhurt; uninjured; unprofaned; unpolluted; unbroken. Webster's 1828

[... in civil actions three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict

Section 7. The right of trial by jury shall remain inviolate; but in civil actions three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony by the consent of both parties, expressed in open court, and in civil actions by the consent of the

CONSTITUTION OF THE STATE OF IDAHO lxv

parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

The guaranty found in this section of the Constitution, that the right of trial by jury shall remain inviolate, was not intended to extend the right of trial by jury, but simply to secure that right as it existed at the date of the adoption of the Constitution.—Christensen v Hollingsworth (Idaho), 53 Pac. 211.

Such provision does not guaranty a jury trial in equitable action.—Christensen v. Hollingsworth (Idaho), 53 Pac. 211.

(For opinion on rehearing see 53 Pac. 271.)

The guaranty found in this section of the Constitution, that the right of trial by jury shall remain inviolate, was not intended to extend the right of trial by jury, but simply to secure that right as it existed at the date of the adoption of the Constitution.—Christensen v Hollingsworth (Idaho), 53 Pac. 211.

Such provision does not guaranty a jury trial in equitable action.—Christensen v. Hollingsworth (Idaho), 53 Pac. 211.

(For opinion on rehearing see 53 Pac. 271.)

Wrong..ANCIENT Right

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Attainting The Jury is The Proper Remedy for a false Verdict

either of Law, or Equity, but for want of Proof; for neither Law, nor Equity can give a Man his Right, unless he prove it.

La. Also if the Grand-Jury in Attaint affirm a false Verdict given by
(63) the Petty-Jury, there is no farther Remedy, but the Conscience of the party.

Ph. Here again the want of Proof is the want of Remedy; for if he can prove that the Verdict given was false, the King can give him remedy such way as himself shall think best, and ought to do it, in case the Party shall find surety, if the same Verdict be again affirmed, to satisfie his Adversary for the Dammage, and Vexation he puts him to.

La. But there is a Statute made since; *viz.* 27 *Eliz. c.* 8. by which that

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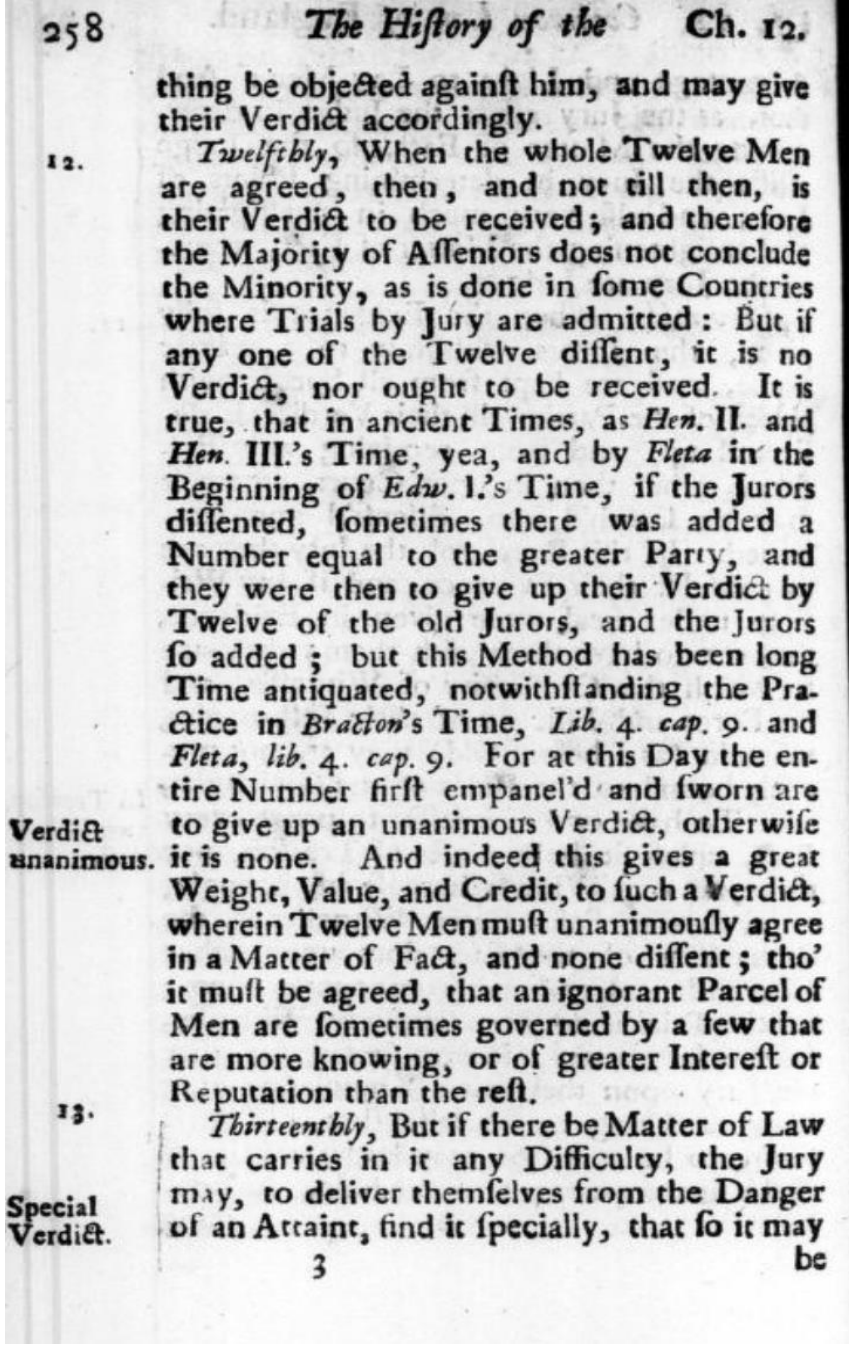
Pg. 258

[…When the whole Twelve Men are agreed, then, and not till then, is their Verdict to be received; and therefore the Majority of Assentors does not conclude the Minority, as is done in some Countries where Trials by Jury are admitted: But if any one of the Twelve dissent it is no Verdict, nor ought to be received…]



258 *The History of the* Ch. 12.

thing be objected against him, and may give their Verdict accordingly.

12. *Twelfthly*, When the whole Twelve Men are agreed, then, and not till then, is their Verdict to be received; and therefore the Majority of Assentors does not conclude the Minority, as is done in some Countries where Trials by Jury are admitted: But if any one of the Twelve dissent, it is no Verdict, nor ought to be received. It is true, that in ancient Times, as *Hen.* II. and *Hen.* III.'s Time, yea, and by *Fleta* in the Beginning of *Edw.* I.'s Time, if the Jurors dissented, sometimes there was added a Number equal to the greater Party, and they were then to give up their Verdict by Twelve of the old Jurors, and the Jurors so added; but this Method has been long Time antiquated, notwithstanding the Practice in *Bracton*'s Time, *Lib.* 4. *cap.* 9. and *Fleta*, *lib.* 4. *cap.* 9. For at this Day the entire Number first empanel'd and sworn are to give up an unanimous Verdict, otherwise it is none. And indeed this gives a great Weight, Value, and Credit, to such a Verdict, wherein Twelve Men must unanimously agree in a Matter of Fact, and none dissent; tho' it must be agreed, that an ignorant Parcel of Men are sometimes governed by a few that are more knowing, or of greater Interest or Reputation than the rest.

Verdict unanimous.

13. *Thirteenthly*, But if there be Matter of Law that carries in it any Difficulty, the Jury may, to deliver themselves from the Danger of an Attaint, find it specially, that so it may

Special Verdict.

3 be

https://archive.org/details/bim_eighteenth-century_the-history-of-the-commo_hale-matthew-sir_1716

1682 PENNSYLVANIA
FRAME OF GOVERNMENT
OF PENNSYLVANIA
April 25, 1682
Charter of liberties approved and declared FUNDAMENTAL
Pg 217
Trial by Jury
VIII. That all trials shall be by twelve men, and as near as may be, peers or equals, and of the **NEIGHBORHOOD**, and men without just exception; in cases of life, there shall be first twenty-four returned by the sheriffs [why plural?], for a grand inquest, of whom twelve, at least, shall find the complaint to be true; and then the twelve men, or peers, to be likewise returned by the sheriff, shall have the final judgment. But reasonable challenges shall be always admitted against the said twelve men, or any of them. https://archive.org/details/sourcesofourlibe0000unse

HISTORY OF THE TRIAL BY JURY
William Forsyth
1852
Pg.
[...Now, however, that attaint has been abolished, there is no mode of punishing a jury; and the remedy for an improper verdict in civil actions is a new trial.]
[attainting the jury is common law] [Re-trial is Roman Civil]
[But in trials for felony [or infamous crimes] if jurors choose to assert contrary to law by a verdict of not guilty, that, admitting all the facts to be proved, no legal offence has been committed by the prisoner, he must inevitably escape: for there can be no second trial, he having been already once in jeopardy upon the charge. And it is to be feared that this has too often happened in trials...]
[Why must this be feared? Didn't Fortesque say it's better for a guilty man escape than an innocent man suffer?

Pg.220 [...no man can be convicted at the suit of the king of any capital offence [or any felony], unless by the unanimous voice of twenty-four of his equals and neighbours : that is, by twelve at least of the grand jury in the first place assenting to the accusation; and afterwards by the whole petit jury, of twelve more, finding him guilty ..]

[..Formerly it was considered necessary that some of the grand jury should be summoned out of every hundred in the county. But this has been altered by statute 6 Geo. IV. c. 50, [1820] and the sheriff is now only required to return them from the body of his county…]

https://archive.org/details/historytrialbyj01forsgoog

Denman, C. J., said[1]: "The court has no doubt that twenty-three is the limited number. It is a matter of practice proved by authorities in the only way in which proof can be given of a point of that kind which has been undisputed.' The reason of this is that twelve agreeing may constitute a majority; for it is a maxim of the English law, as Blackstone says, that 'no man can be convicted at the suit of the king of any capital offence [or any felony], unless by the unanimous voice of twenty-four of his equals and neighbours: that is, by twelve at least of the grand jury in the first place assenting to the accusation; and afterwards by the whole petit jury, of twelve more, finding him guilty.'

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'You, as foreman of this grand inquest for the body of this county of A, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge. The king's counsel, your fellows', and your own, you shall keep secret: you shall present no one for envy, hatred, or malice; neither shall you leave any one unpresented for fear, favour, or affection, or hope of reward; but you shall present all things truly as they come to your know-

[1] R. v. Marsh, 6 Ad. and Ell. 242.

[This was at last attained by the introduction of new trials, which led to the discontinuance of the process by attaint, and it was finally abolished by statute 6 Geo. IV. c. 50. The first instance on record of a new trial being granted occurred in the year 1665…]

[I'm not going to pretend that I understand attainting the jury.. But if it ended under George IV, this is long after 1606 and is still part of the common law of England and should be preferred over retrial.]

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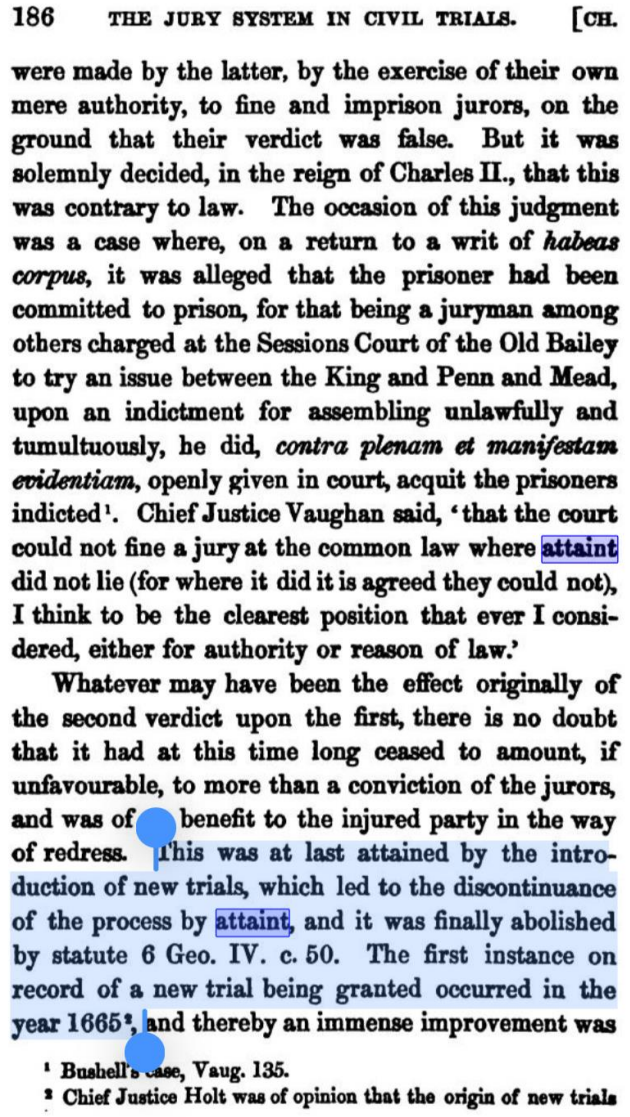
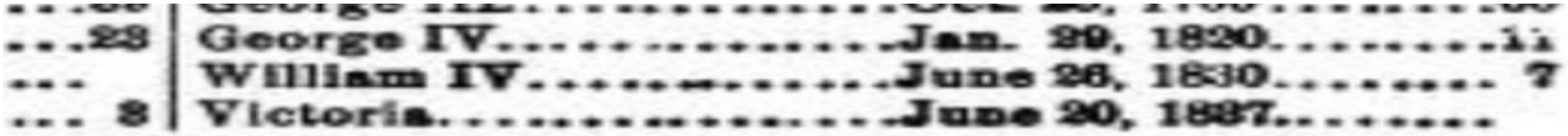


186 THE JURY SYSTEM IN CIVIL TRIALS. [CH.

were made by the latter, by the exercise of their own mere authority, to fine and imprison jurors, on the ground that their verdict was false. But it was solemnly decided, in the reign of Charles II., that this was contrary to law. The occasion of this judgment was a case where, on a return to a writ of *habeas corpus*, it was alleged that the prisoner had been committed to prison, for that being a juryman among others charged at the Sessions Court of the Old Bailey to try an issue between the King and Penn and Mead, upon an indictment for assembling unlawfully and tumultuously, he did, *contra plenam et manifestam evidentiam*, openly given in court, acquit the prisoners indicted[1]. Chief Justice Vaughan said, 'that the court could not fine a jury at the common law where attaint did not lie (for where it did it is agreed they could not), I think to be the clearest position that ever I considered, either for authority or reason of law.'

Whatever may have been the effect originally of the second verdict upon the first, there is no doubt that it had at this time long ceased to amount, if unfavourable, to more than a conviction of the jurors, and was of benefit to the injured party in the way of redress. This was at last attained by the introduction of new trials, which led to the discontinuance of the process by attaint, and it was finally abolished by statute 6 Geo. IV. c. 50. The first instance on record of a new trial being granted occurred in the year 1665[2], and thereby an immense improvement was

[1] Bushell's case, Vaug. 135.
[2] Chief Justice Holt was of opinion that the origin of new trials



...28	George IV	Jan. 29, 1820	...ii
...	William IV	June 26, 1830	... 7
... 8	Victoria	June 20, 1837	...

against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

MODE OF TRIAL.

ARTICLE VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of council for his defence.

RIGHT OF TRIAL BY JURY.

ARTICLE VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury shall be

Article VII Right Of Trial By Jury
Territory of Idaho First session
Territorial Organic Act, The Federal Constitution
1864

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In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

PEER, *noun* [Latin par.]

1. An equal; one of the same rank. A man may be familiar with his peers.

2. An equal in excellence or endowments.

In song he never had his *peer*

3. A companion; a fellow; an associate.

VIC'INAGE, *noun* [from Latin vicinia, neighborhood; vicinus, near.]

Neighborhood; the place or places adjoining or near. A jury must be of the *vicinage* or body of the country.

The court has no doubt that twenty-three is the limited number. It is a matter of practice proved by authorities in the only way in which proof can be given of a point of that kind which has been undisputed.' The reason of this is that twelve agreeing may constitute a majority; for it is a maxim of the English law, as Blackstone says, that no man can be convicted at the suit of the king of any capital offence [or any infamous crime], unless by the unanimous voice of twenty-four of his equals and #neighbors: that is, by twelve at least of the grand jury in the first place assenting to the accusation; and afterwards by the whole #petit jury, of twelve more, finding him guilty.'

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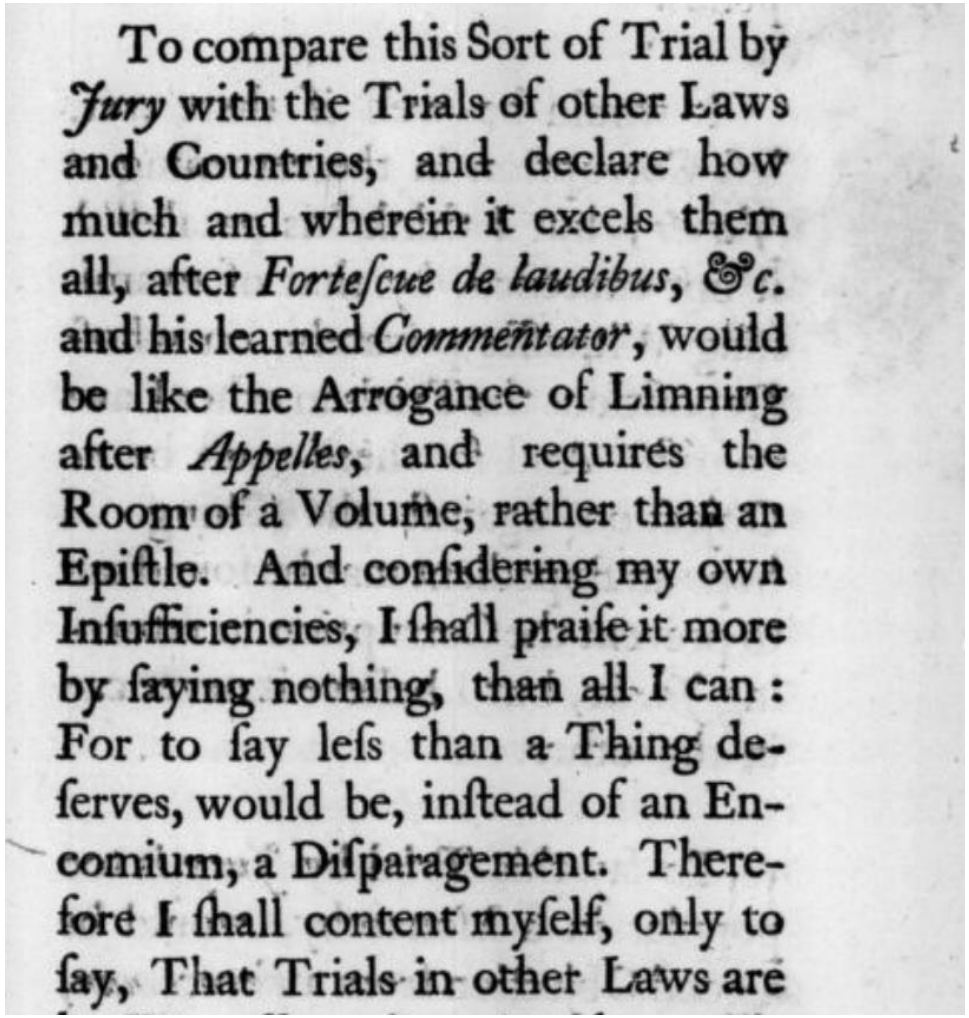

To compare this Sort of Trial by *Jury* with the Trials of other Laws and Countries, and declare how much and wherein it excels them all, after *Forteſcue de laudibus*, &c. and his learned *Commentator*, would be like the Arrogance of Limning after *Appelles*, and requires the Room of a Volume, rather than an Epiſtle. And conſidering my own Inſufficiencies, I ſhall praiſe it more by ſaying nothing, than all I can: For to ſay leſs than a Thing deſerves, would be, inſtead of an Encomium, a Diſparagement. Therefore I ſhall content myſelf, only to ſay, That Trials in other Laws are

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Trials per pais: or, the law of England concerning juries by nisi prius, &c. With a compleat treatise of the law of evidence, ... The eighth edition, with large additions. ... Originally compiled by Giles Duncomb, ... and continued by a careful hand. In two volumes. ... 1766: Vol 1

https://archive.org/details/bim_eighteenth-century_trials-per-pais-or-the_eure-samson-sir_1766_1

HISTORY OF THE TRIAL BY JURY, William Forsyth, 1852

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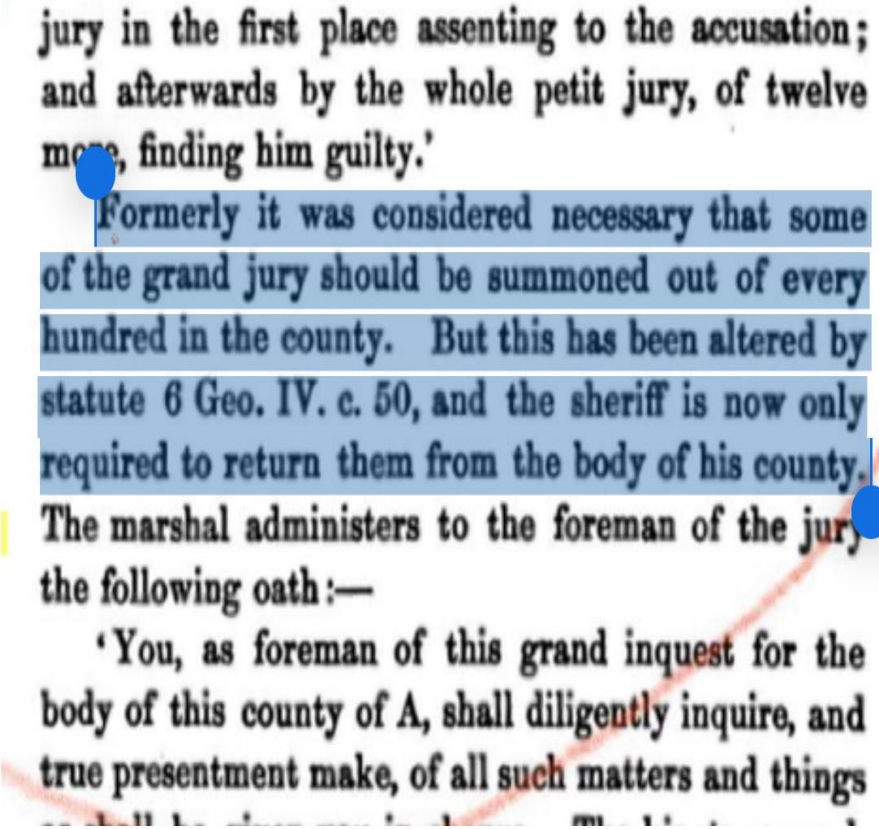

jury in the first place assenting to the accusation; and afterwards by the whole petit jury, of twelve more, finding him guilty.'

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The Mirror of Justices, THE COMMON LAW
BOOK ., Sc. 1 , Pg. 245
https://archive.org/details/mirrorofjustices00hornrich/page/121/mode/1up

It is abuse that justices and their officers, who kill people by false judgment, be not destroyed as other murderers, which **King Alfred** caused to be done, who **caused forty-four justices in one year to be hanged as murderers for their false judgment.**

1.He hanged Darling because he had judged Sidulf to death, for the retreat of Edulf his son, who afterwards acquitted him of the fact.
2.He hanged Segnor who judged Ulfe to death after **sufficient acquittal**.
3 He hanged Gadwine, because that he judged Hackny to death **without the consent of all the** jurors, and whereas he stood upon the **jury of twelve men**, and because three would have saved him against the nine, Gadwine removed the three, and put others upon the jury, upon whom Hackny put not himself.
4 He hanged Cole, because he judged Ive to death when he was a mad-man.
5 He hanged Malme, because he **judged Prat to death upon a false suggestion** that he committed the felony.
6 He hanged Athulf because he **caused Copping to be hanged before the age of one and twenty years**.
7 He hanged Markes because he judged During to death by **twelve men who were not sworn**.
8 He hanged Ostline because he judged Seaman to death **by a false warrant**, grounded upon false suggestion, which **supposed Seaman to be a person in the warrant, which he was not**.
9 He hanged Billing, **because he judged Lesion to death by fraud**, in this manner he said to the people. Sir, all ye here but he who assisted to kill the man, and because that Lesion did not sit with the other he him commanded to be hanged, and said that he did assist, where he knew he did not assist to kill him.
10 He hanged Seafaule because he **judged Olding to death for not answering**.
11 He hanged Thurston because he judged Thurguer t**o death by verdict of inquest, taken ex officio** without issue joined issue joined.
13 He hanged Athelston, because he **judged Herbert to death for an offence not mortal**.
☐ 14 He hanged Rombold because he judged Lischild, in a case not notorious, **without appeal, and without indictment.**
☐ 15 He hanged Rolfe, because he judged Dunstan to die for an escape out of prison.
☐ 16 He hanged Freburne because he judged Harpin to die, whereas the jury were in doubt of their verdict, for in doubtful causes one ought rather to save than to condemn.
☐ 17 He hanged Seabright who judged Aihebbrus to death, because he condemned one by a false judgment mortal.
18 H**e hanged Hale because he saved Tristram the sheriff from death**, who took to the king's use from another's goods against his will, for as much as any such taking from another against his will, and robbery hath no difference.
☐ He hanged Arnold **because he saved** Boyliffe, who **robbed the people by colour of distresses**, whereof some were by selling distresses, some by extortion of fines, as if betwixt extortion of fines, releasing of tortious distresses, and robbery there were difference.
☐ 19. He hanged Erkinvald because he hanged Franklin, for naught else but because he taught to him who vanquished by battle mortal to say the word of cravant. [...him who overcome in battle; subdued; defeated, to say the word of**Cravent:** a word of **obloquy: language that casts contempt on men**
☐ 20 He hanged Bermond because he caused Garbolt to be beheaded by his judgment in England, for that for which he was outlawed in Ireland.
☐ 21 He hanged Alkman **because he saved Cateman by colour of disseisin**, **who was attainted of burglary**
22 He hanged Saxmond because he hanged Barrold in England, where the king's writ runneth for a fact which he did in the same land where the king's writ did not run.
23 He hanged Alfet because he **judged a clerk to death, over whom he had not cognizance**.
24 He hanged Piron because he judged Hanting to death because he **gave judgment in appeal before the forty days pendant the appeal**, by a writ of false judgment before the king.
☐ 25 He hanged Diling because he **caused Eldon to be hanged, who killed a man by misfortune**.
☐26 He hanged Oswin because he **judged Fulcher to death out of court**.
☐27 H**e hanged Muclin, because he hanged Helgrave by warrant of indictment not special**.
☐ 28 He hanged Horne because he hanged Simin **at days forbidden.**
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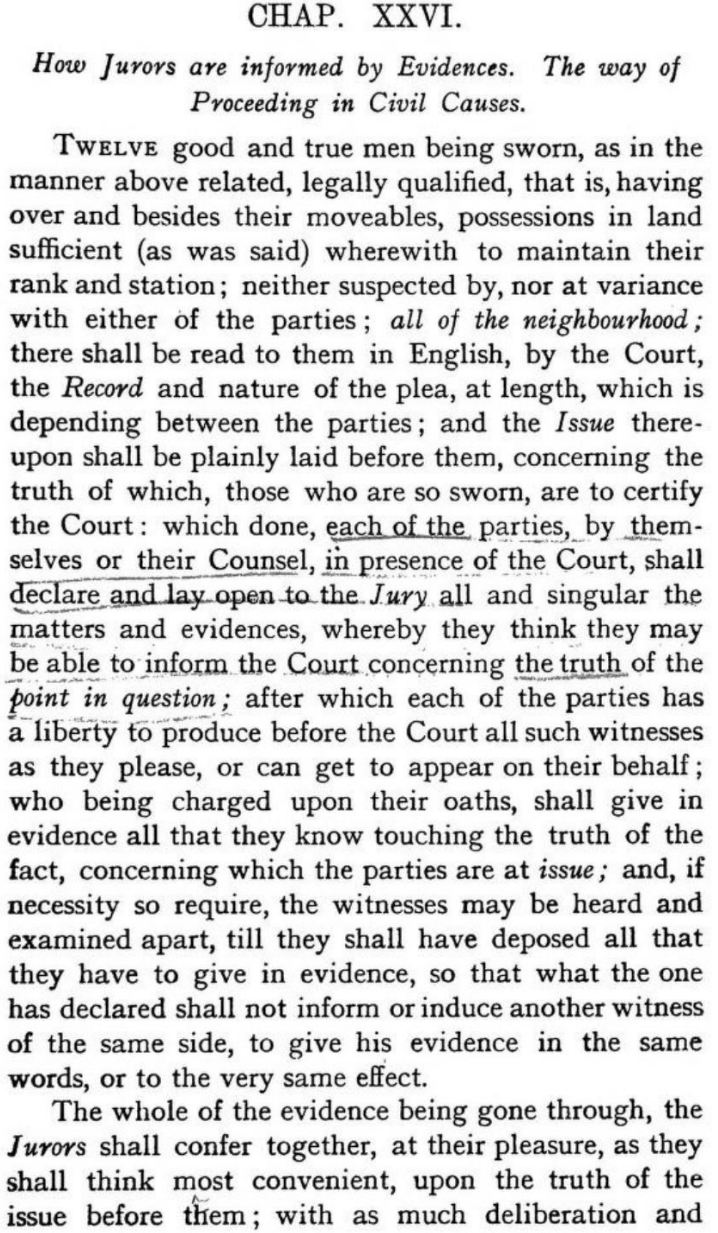
TWELVE good and true men being sworn, as in the manner above related, legally qualified, that is, having over and besides their moveables, possessions in land sufficient (as was said wherewith to maintain their rank and station; neither suspected by, nor at variance with either of the parties; all of the neighbourhood; there shall be read to them in English, by the Court, the Record and nature of the plea, at length, which is depending between the parties; and the Issue thereupon shall be plainly laid before them, concerning the truth of which, those who are so sworn, are to certify the Court: which done, each of the parties, by themselves or their Counsel, in presence of the Court, shall declare and lay open to the Jury all and singular the matters and evidences, whereby they think they may be able to inform the Court concerning the truth of the point in question; after which each of the parties has a liberty to produce before the Court all such witnesses as they please, or can get to appear on their behalf;



CHAP. XXVI.

How Jurors are informed by Evidences. The way of Proceeding in Civil Causes.

TWELVE good and true men being sworn, as in the manner above related, legally qualified, that is, having over and besides their moveables, possessions in land sufficient (as was said) wherewith to maintain their rank and station; neither suspected by, nor at variance with either of the parties; *all of the neighbourhood;* there shall be read to them in English, by the Court, the *Record* and nature of the plea, at length, which is depending between the parties; and the *Issue* thereupon shall be plainly laid before them, concerning the truth of which, those who are so sworn, are to certify the Court: which done, each of the parties, by themselves or their Counsel, in presence of the Court, shall declare and lay open to the *Jury* all and singular the matters and evidences, whereby they think they may be able to inform the Court concerning the truth of the *point in question;* after which each of the parties has a liberty to produce before the Court all such witnesses as they please, or can get to appear on their behalf; who being charged upon their oaths, shall give in evidence all that they know touching the truth of the fact, concerning which the parties are at *issue;* and, if necessity so require, the witnesses may be heard and examined apart, till they shall have deposed all that they have to give in evidence, so that what the one has declared shall not inform or induce another witness of the same side, to give his evidence in the same words, or to the very same effect.

The whole of the evidence being gone through, the *Jurors* shall confer together, at their pleasure, as they shall think most convenient, upon the truth of the issue before them; with as much deliberation and

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in like manner shall be done with all ihe rest of the panel, until twelve be sworn : so inr-.ifferent, as to the event of the cause, that neither of the parties can have reasonable matter of challengeDigitized by Microsoft®40against them : out of these twelve, four, at the least, shall be Hundredors, dwelling in the Hundred, where the Vill is situate, in which the fact disputed is supposed to be : and every one of the Jury shall have lands, or revenues, for the term of his life, of the yearly value at least of forty shillings.This method is observed in all actions and causes, criminal, real or personal ; except where, in personal actions, the damages, or thing in demand, shall not exceed forty marks English money : because, in such like actions of small value, it is not necessary, nor required, that the Jurors should be able to expend so much ; but they are required to have lands, or revenues, to a competent value, at the discretion of the Justices ; otherwise they shall not be accepted ; lest, by reason of their meanness and poverty, they may be liable to be easily bribed, or suborned

interest, as he cannot be deemed an indifferent person to pass between the parties: of which sort of exceptio ıs there is so much variety, as is impossible to shew ın a small compass: if any one of the exceptions l e made appear to the Court to be true and reasor ıble, then he against whom the exception is taker, shall not be sworn, but his name shall be struck out of the *panel:* in like manner shall be done with all the rest of the *panel*, until twelve be sworn: so indifferent, as to the event of the cause, that neither of the parties can have reasonable matter of challenge

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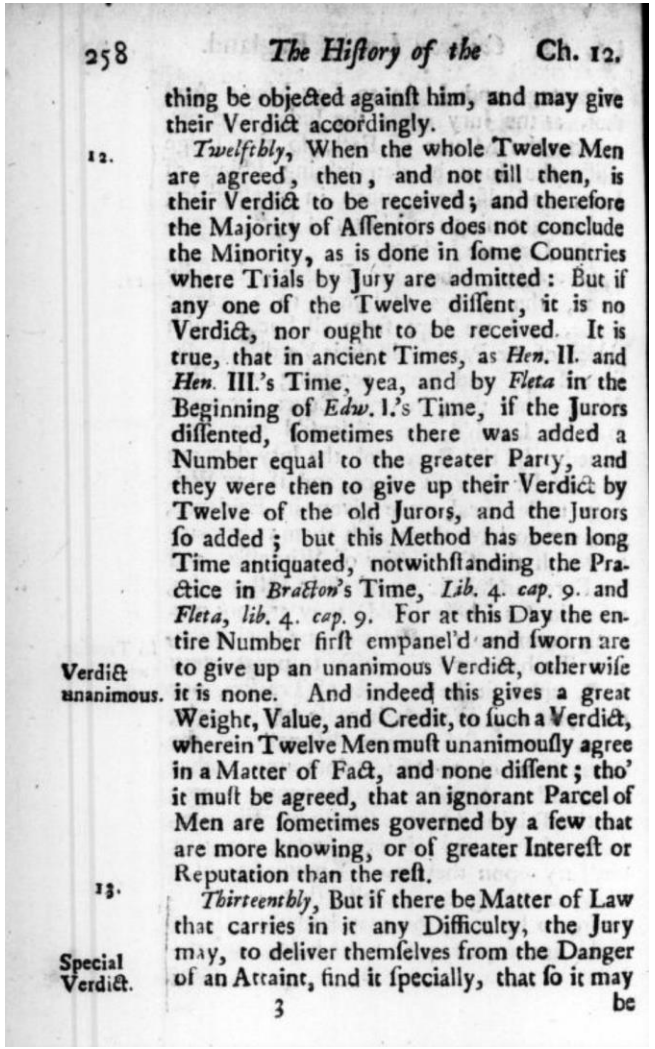
against them: out of these twelve, four, at the least, shall be *Hundredors*, dwelling in the *Hundred*, where the *Vill* is situate, in which the fact disputed is supposed to be: and every one of the *Jury* shall have lands, or revenues, *for the term of his life*, of the yearly value at least of *forty shillings.*

This method is observed in all actions and causes, *criminal*, *real* or *personal;* except where, in personal actions, the damages, or thing in demand, shall not exceed *forty marks English* money: because, in such like actions of small value, it is not necessary, nor required, that the Jurors should be able to expend so much; but they are required to have lands, or revenues, to a competent value, at the discretion of the Justices; otherwise they shall not be accepted; lest, by reason of their meanness and poverty, they may be liable to be easily bribed, or suborned: and in case, after all exceptions taken, so many be struck out of the *panel*

Twelfthly, When the whole Twelve Men are agreed, then, and not till then, is their Verdict to be received; and therefore the Majority of Assentors does not conclude the Minority, as is done in some Countries where Trials by Jury are admitted: But if any one of the Twelve dissent, it is no Verdict, nor ought to be received…]

[…And indeed this gives a great Weight, Value, and Credit, to such a Verdict, wherein Twelve Men must unanimously agree in a Matter of Fact, and none dissent; tho' it must be agreed, that an ignorant Parcel of Men are sometimes governed by a few that are more knowing, or of greater Interest or Reputation than the rest…]
[…Thirteenthly, But it there be Matter of Law that carries in it any Difficulty, the Jury may, to deliver themselves from the Danger of an Attaint, find it specially, that so it may…]



258 *The History of the* Ch. 12.

thing be objected against him, and may give their Verdict accordingly.

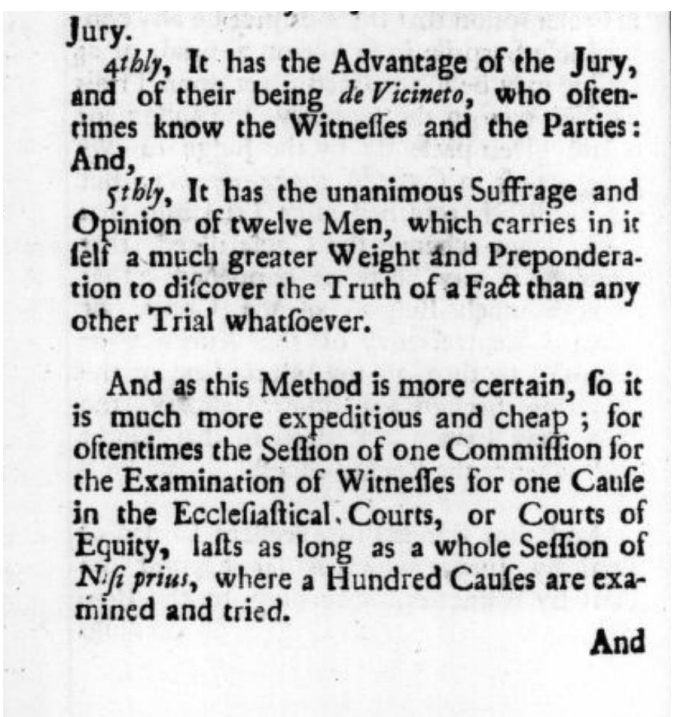
12. *Twelfthly*, When the whole Twelve Men are agreed, then, and not till then, is their Verdict to be received; and therefore the Majority of Assentors does not conclude the Minority, as is done in some Countries where Trials by Jury are admitted: But if any one of the Twelve dissent, it is no Verdict, nor ought to be received. It is true, that in ancient Times, as *Hen.* II. and *Hen.* III.'s Time, yea, and by *Fleta* in the Beginning of *Edw.* I.'s Time, if the Jurors dissented, sometimes there was added a Number equal to the greater Party, and they were then to give up their Verdict by Twelve of the old Jurors, and the Jurors so added; but this Method has been long Time antiquated, notwithstanding the Practice in *Bracton*'s Time, *Lib.* 4. *cap.* 9. and *Fleta*, *lib.* 4. *cap.* 9. For at this Day the entire Number first empanel'd and sworn are to give up an unanimous Verdict, otherwise it is none. And indeed this gives a great Weight, Value, and Credit, to such a Verdict, wherein Twelve Men must unanimously agree in a Matter of Fact, and none dissent; tho' it must be agreed, that an ignorant Parcel of Men are sometimes governed by a few that are more knowing, or of greater Interest or Reputation than the rest.

Verdict unanimous.

13. *Thirteenthly*, But if there be Matter of Law that carries in it any Difficulty, the Jury may, to deliver themselves from the Danger of an Attaint, find it specially, that so it may be

Special Verdict.

3



Jury.

4*thly*, It has the Advantage of the Jury, and of their being *de Vicineto*, who oftentimes know the Witnesses and the Parties: And,

5*thly*, It has the unanimous Suffrage and Opinion of twelve Men, which carries in it self a much greater Weight and Preponderation to discover the Truth of a Fact than any other Trial whatsoever.

And as this Method is more certain, so it is much more expeditious and cheap; for oftentimes the Session of one Commission for the Examination of Witnesses for one Cause in the Ecclesiastical Courts, or Courts of Equity, lasts as long as a whole Session of *Nisi prius*, where a Hundred Causes are examined and tried.

And

The history of the common law of England. Divided into twelve chapters. By Sir Matthew Hale, ... 1716

be decided in that Court where the Verdict is returnable; and if the Judge over-rule the Point of Law contrary to Law, whereby the Jury are perfwaded to find a general Verdict, (which yet they are not bound to do, if they doubt it,) then the Judge, upon the Requeft of the Party defiring it, is bound by Law in convenient Time to feal a Bill E of Exceptions, containing the whole Mat- c ter excepted to j that fo the Party grieved by fuch Indifcretion or Error of the Judge, may have Relief by Writ of Error on the Statute of Wetminfter 2.

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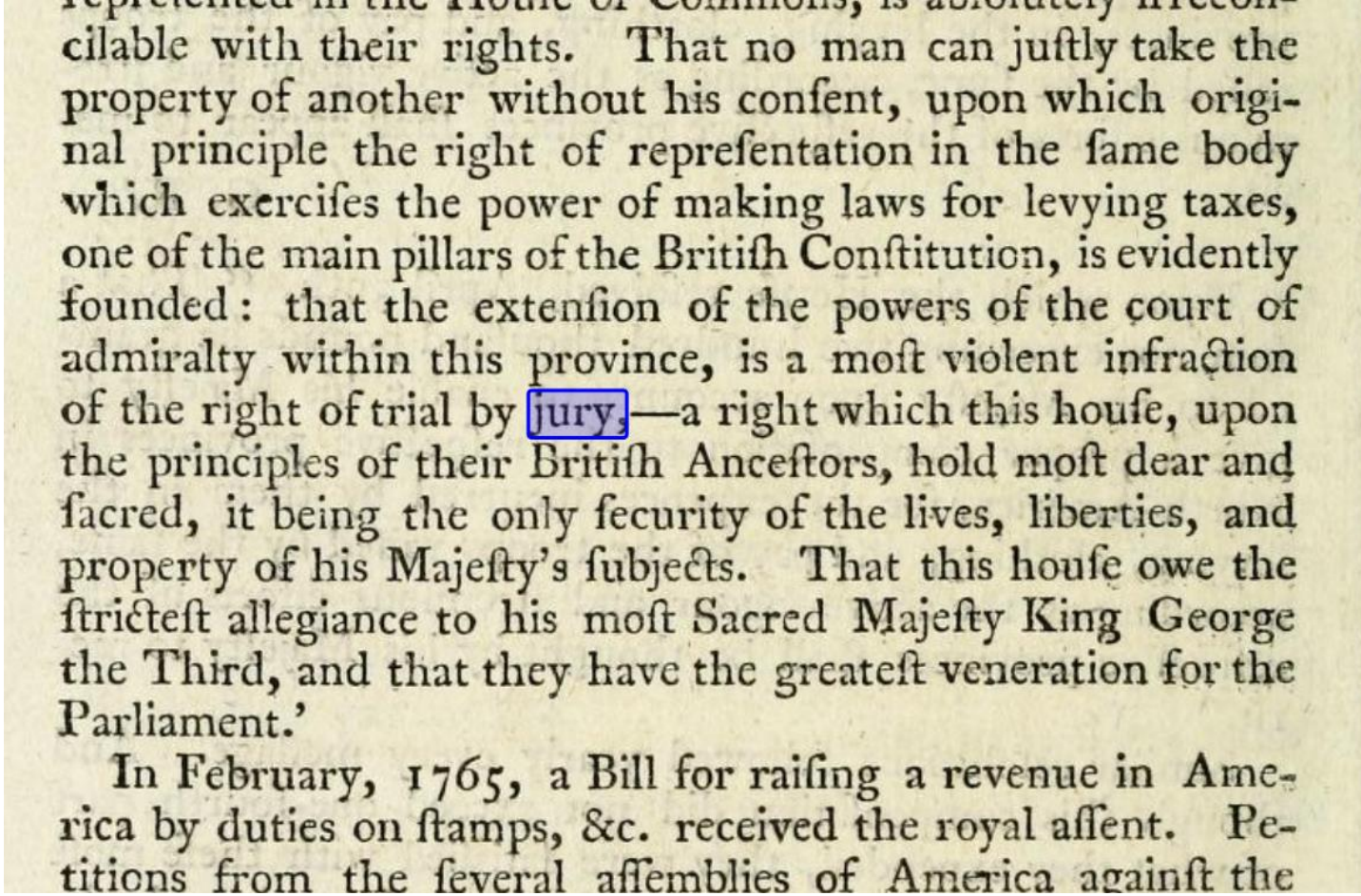
[.. that the extension of the powers of the court of admiralty within this province, is a most violent infraction of the right of trial by jury, — a right which this house, upon the principles of their British Ancestors, hold most dear and sacred, it being the only security of the lives, liberties, and property of his Majesty's subjects…].



cilable with their rights. That no man can juſtly take the property of another without his conſent, upon which original principle the right of repreſentation in the ſame body which exerciſes the power of making laws for levying taxes, one of the main pillars of the Britiſh Conſtitution, is evidently founded: that the extenſion of the powers of the court of admiralty within this province, is a moſt violent infraction of the right of trial by jury,—a right which this houſe, upon the principles of their Britiſh Anceſtors, hold moſt dear and ſacred, it being the only ſecurity of the lives, liberties, and property of his Majeſty's ſubjects. That this houſe owe the ſtricteſt allegiance to his moſt Sacred Majeſty King George the Third, and that they have the greateſt veneration for the Parliament.'

In February, 1765, a Bill for raiſing a revenue in America by duties on ſtamps, &c. received the royal aſſent. Petitions from the ſeveral aſſemblies of America againſt the

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The said Indictment is grounded upon the fore-recited act, intitled, * An Act for the Execution of a Judgment given in Parliament against Lieut, col. John Lilburne ' ; and so relates only to some judgment supposed to be given in parliament against the said It. col. John Lilburne ; and if no such judgment were given, the act were void, and the judgment also. Now it doth not appear that any judgment, for any crime whatsoever, was given in parliament against the said Lieut, col. John Lilburne.** 1. Before any judgment can be given in law against any Englishman, for any crime, there must be either an Indictment, presentmen

In his closing speech to the jury, he took the position that the act was void because unconstitutional ; and upon that ground he was acquitted, as appears from the subsequent examination of the jurors before the Council of State, where several substantially admitted this, by saying that they voted for acquittal because they were judges of the law as well as the facts…]

As for all parliaments in general, he said parliaments were a delegated power, and ought to give a reason of all they do; and that it was not in their power (as he had proved in his plea at large, before the Lord Chief Justice Rolls and Mr. Justice Bacon, May 18, 1647;) nor had they the least jurisdiction, to sentence him, or any of the least free-born Englishman; unless it be their own members…]

That all crimes whatever were to be heard, determined, and judged at the Common-law, and no where else. Acts of Attainder were not lawful.“]

APPENDIX.] JOHN LILBURNE. 59

such proceeding as abovesaid, hath been made before the judgment passed against him, the judgment is to be holden for erroneous and void, and ought so to be reputed. Now it doth not appear either by the said pretended act, as it is recited in the indictment, nor by any record of the supposed judgment produced, nor any otherwise, that there was any indictment, presentment, or information to the parliament of the Commonwealth of England against the said Lieut. col. John Lilburne ; or even if there were, it doth not appear, that he ever appeared to the same, nor that he was ever outlawed for not appearing ; neither doth any pleading by the said lieut. col. John Lilburne to any such indictment or information appear, nor any trial of him for the same. And therefore if any such pretended judgment be entered, as the said supposed act, and the Indictment of John Lilburne, prisoner at the bar, thereupon, doth relate unto, the same is erroneous and void in law; and by consequence the said indictment is void." [48]

In his closing speech to the jury, he took the position that the act was void because unconstitutional ; and upon that ground he was acquitted, as appears from the subsequent examination of the jurors before the Council of State, where several substantially admitted this, by saying that they voted for acquittal because they were judges of the law as well as the facts, although two or three claimed that their verdict was on the ground of insufficient proof that he was the Lilburne described in the statute.[49]

" Concerning the act whereupon he was indicted, this he said: It was a lye and a falsehood: an act that hath no reason in it, no law for it ; it was done as Pharoah did; Resolved upon the question, that all the male children should be murdered. That if he died upon this Act, he died upon the same score that Abel did, being murdered by Cain. That the act was a void act, a printed thing, there being no one punctilio or clause in it, grounded on the law of England, and that it was an unjust, unrighteous, and treacherous act, and that he doubted not to shatter that act in pieces." [50]

" As for all parliaments in general, he said parliaments were a delegated power, and ought to give a reason of all they do; and that it was not in their power (as he had proved in his plea at large, before the Lord Chief Justice Rolls and Mr. Justice Bacon, May 18, 1647;) nor had they the least jurisdiction, to sentence him, or any of the least free-born Englishman; unless it be their own members. That all crimes whatever were to be heard, determined, and judged at the Common-law, and no where else. Acts of Attainder were not lawful."

" For the Jury, he called them his honourable Jury, and said they were

[48] Howell's State Trials, vol. v, pp. 438–439.

[49] Ibid., pp. 446–450.

[50] Ibid., p. 443.

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[….That the constant subject of their complaints has been the having their money taken from them without their consent;
The substituting a dependent judge, bribed by being paid out of the forfeitures, to determine in all causes of revenue, by the rules of the civil law, and without a jury; and the violation of their security in the due administration of government and of justice, by rendering the governor and judges totally dependent on the crown.

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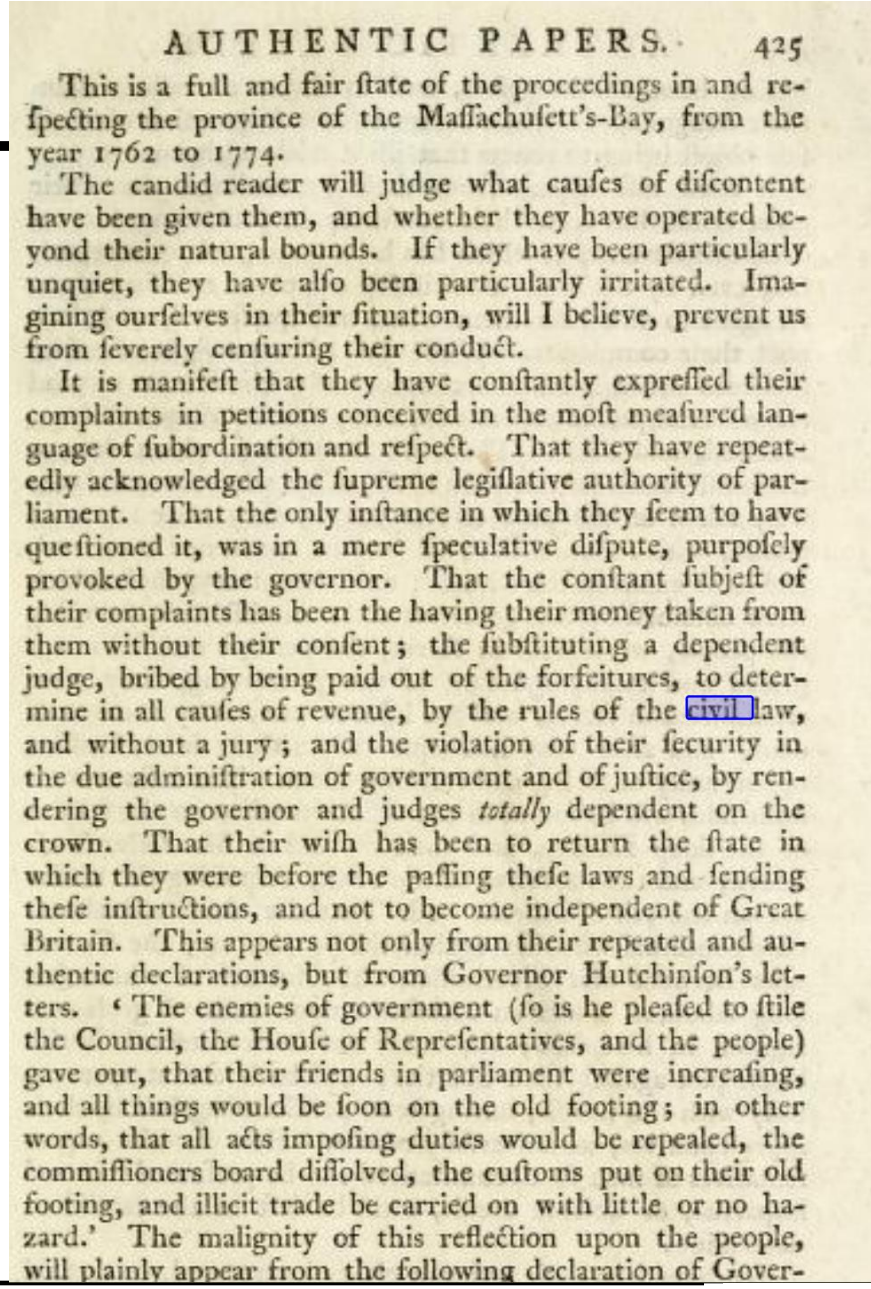


AUTHENTIC PAPERS. 425

This is a full and fair ſtate of the proceedings in and reſpecting the province of the Maſſachuſett's-Bay, from the year 1762 to 1774.

The candid reader will judge what cauſes of diſcontent have been given them, and whether they have operated beyond their natural bounds. If they have been particularly unquiet, they have alſo been particularly irritated. Imagining ourſelves in their ſituation, will I believe, prevent us from ſeverely cenſuring their conduct.

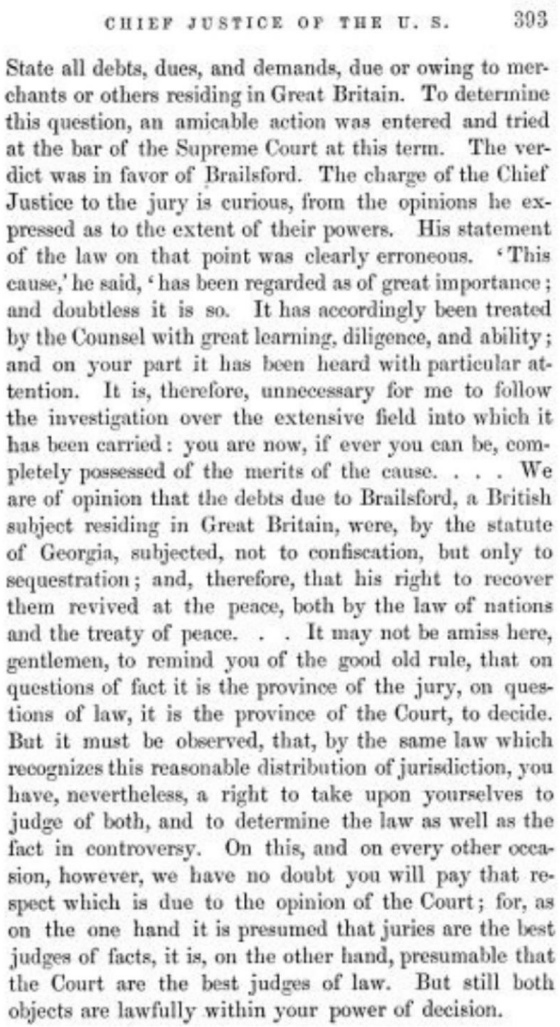
It is manifeſt that they have conſtantly expreſſed their complaints in petitions conceived in the moſt meaſured language of ſubordination and reſpect. That they have repeatedly acknowledged the ſupreme legiſlative authority of parliament. That the only inſtance in which they ſeem to have queſtioned it, was in a mere ſpeculative diſpute, purpoſely provoked by the governor. That the conſtant ſubject of their complaints has been the having their money taken from them without their conſent; the ſubſtituting a dependent judge, bribed by being paid out of the forfeitures, to determine in all cauſes of revenue, by the rules of the civil law, and without a jury; and the violation of their ſecurity in the due adminiſtration of government and of juſtice, by rendering the governor and judges *totally* dependent on the crown. That their wiſh has been to return the ſtate in which they were before the paſſing theſe laws and ſending theſe inſtructions, and not to become independent of Great Britain. This appears not only from their repeated and authentic declarations, but from Governor Hutchinſon's letters. 'The enemies of government (ſo is he pleaſed to ſtile the Council, the Houſe of Repreſentatives, and the people) gave out, that their friends in parliament were increaſing, and all things would be ſoon on the old footing; in other words, that all acts impoſing duties would be repealed, the commiſſioners board diſſolved, the cuſtoms put on their old footing, and illicit trade be carried on with little or no hazard.' The malignity of this reflection upon the people, will plainly appear from the following declaration of Gover-

Jury Determine Fact & Law

Georgia v. Brailsford 1792-1794,

First Trial by Jury held by the Supreme Court

[…it must be observed, that, by the same law which recognizes this reasonable distribution of jurisdiction, you have, nevertheless, a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy.



CHIEF JUSTICE OF THE U. S. 393

State all debts, dues, and demands, due or owing to merchants or others residing in Great Britain. To determine this question, an amicable action was entered and tried at the bar of the Supreme Court at this term. The verdict was in favor of Brailsford. The charge of the Chief Justice to the jury is curious, from the opinions he expressed as to the extent of their powers. His statement of the law on that point was clearly erroneous. 'This cause,' he said, 'has been regarded as of great importance; and doubtless it is so. It has accordingly been treated by the Counsel with great learning, diligence, and ability; and on your part it has been heard with particular attention. It is, therefore, unnecessary for me to follow the investigation over the extensive field into which it has been carried: you are now, if ever you can be, completely possessed of the merits of the cause. . . . We are of opinion that the debts due to Brailsford, a British subject residing in Great Britain, were, by the statute of Georgia, subjected, not to confiscation, but only to sequestration; and, therefore, that his right to recover them revived at the peace, both by the law of nations and the treaty of peace. . . It may not be amiss here, gentlemen, to remind you of the good old rule, that on questions of fact it is the province of the jury, on questions of law, it is the province of the Court, to decide. But it must be observed, that, by the same law which recognizes this reasonable distribution of jurisdiction, you have, nevertheless, a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt you will pay that respect which is due to the opinion of the Court; for, as on the one hand it is presumed that juries are the best judges of facts, it is, on the other hand, presumable that the Court are the best judges of law. But still both objects are lawfully within your power of decision.

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State v. Croteau

[…It was anciently the acknowledged province of the jury, in civil as well as criminal cases, to decide all questions of law, as well as of fact, which were involved in an issue to the country.

But in criminal prosecutions the ancient common law right of the jury, in favor of the prisoner, to determine the whole matter in issue, — the law as well as the fact, — remains unimpaired. Bennett, J., dissenting.

The right of a jury to fin'd not only the fact of the issue, but to decide upon its criminality, was, in England, essential to the protection of innocence and the preservation-of liberty, and for that reason has been maintained and preserved.

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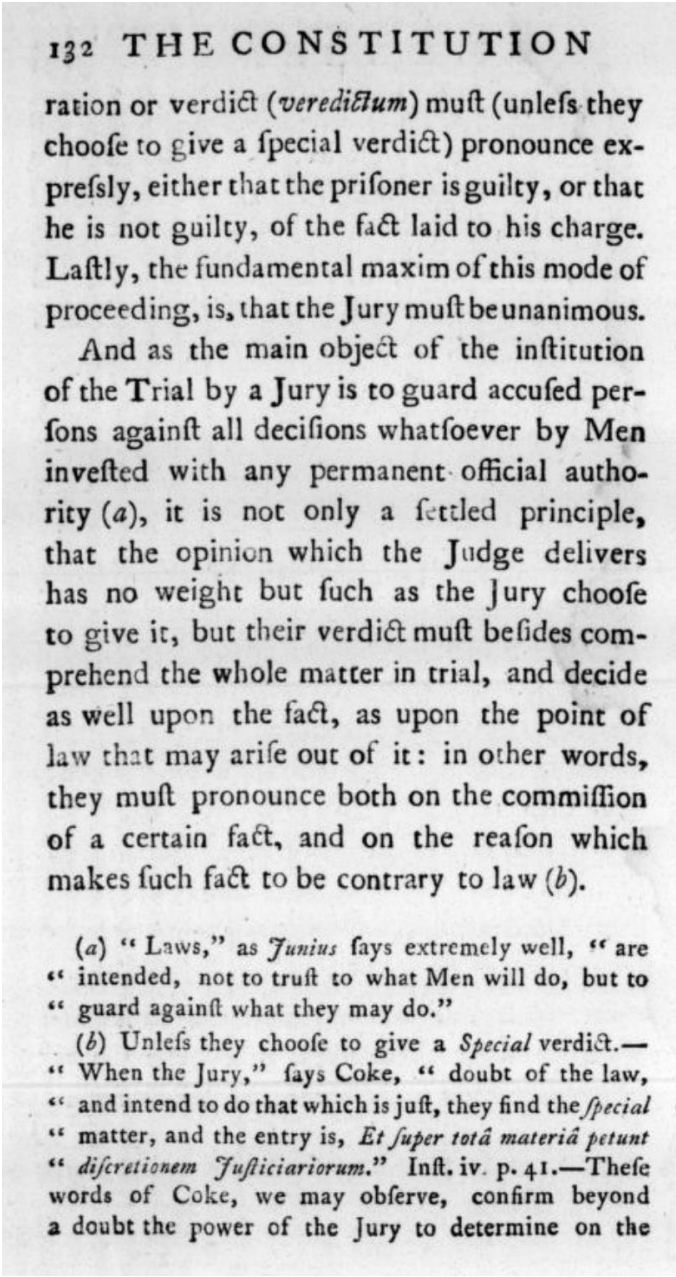
https://opencasebook.org/casebooks/4165-the-american-jury/resources/3.10.4-state-v-croteau/

“ For twelve honest men have decided the cause,
Who are judges alike of the facts and the laws.”
29 Par. Hist. 582. 5 Camp. Ld. Chan. 50. 6 lb. 345.

[…Lord Erskine, in his famous argument in the case of the Dean of St. Asaph, pushed this objection still farther; and claimed, that the words and nature of a verdict, in a criminal case, necessarily import, that the jury are the judges of the law and fact, and that they must necessarily decide, both as to the commission of the act charged, and also as to its criminality, because, he says, if the act were not criminal, a verdict of guilty would he false…]

" As the main object of the institution of the trial by jury is to guard the accused persons against all decisions whatsoever by men invested with any permanent official authority, it is not only a settled principle, that the opinion which the judge delivers has no weight, but such as the jury choose to give it, but their verdict must, besides, comprehend the whole matter in trial, and decide as well upon the fact, as upon the point of law that may arise out of it; in other words, they must pronounce both on the commission of a certain fact, and on the reason which makes such fact to be contrary to law."



132 THE CONSTITUTION

ration or verdict (*veredictum*) must (unless they choose to give a special verdict) pronounce expressly, either that the prisoner is guilty, or that he is not guilty, of the fact laid to his charge. Lastly, the fundamental maxim of this mode of proceeding, is, that the Jury must be unanimous.

And as the main object of the institution of the Trial by a Jury is to guard accused persons against all decisions whatsoever by Men invested with any permanent official authority (*a*), it is not only a settled principle, that the opinion which the Judge delivers has no weight but such as the Jury choose to give it, but their verdict must besides comprehend the whole matter in trial, and decide as well upon the fact, as upon the point of law that may arise out of it: in other words, they must pronounce both on the commission of a certain fact, and on the reason which makes such fact to be contrary to law (*b*).

(*a*) "Laws," as *Junius* says extremely well, "are "intended, not to trust to what Men will do, but to "guard against what they may do."

(*b*) Unless they choose to give a *Special* verdict.—"When the Jury," says Coke, "doubt of the law, "and intend to do that which is just, they find the *special* "matter, and the entry is, *Et super totâ materiâ petunt* "*discretionem Justiciariorum.*" Inst. iv. p. 41.—These words of Coke, we may observe, confirm beyond a doubt the power of the Jury to determine on the

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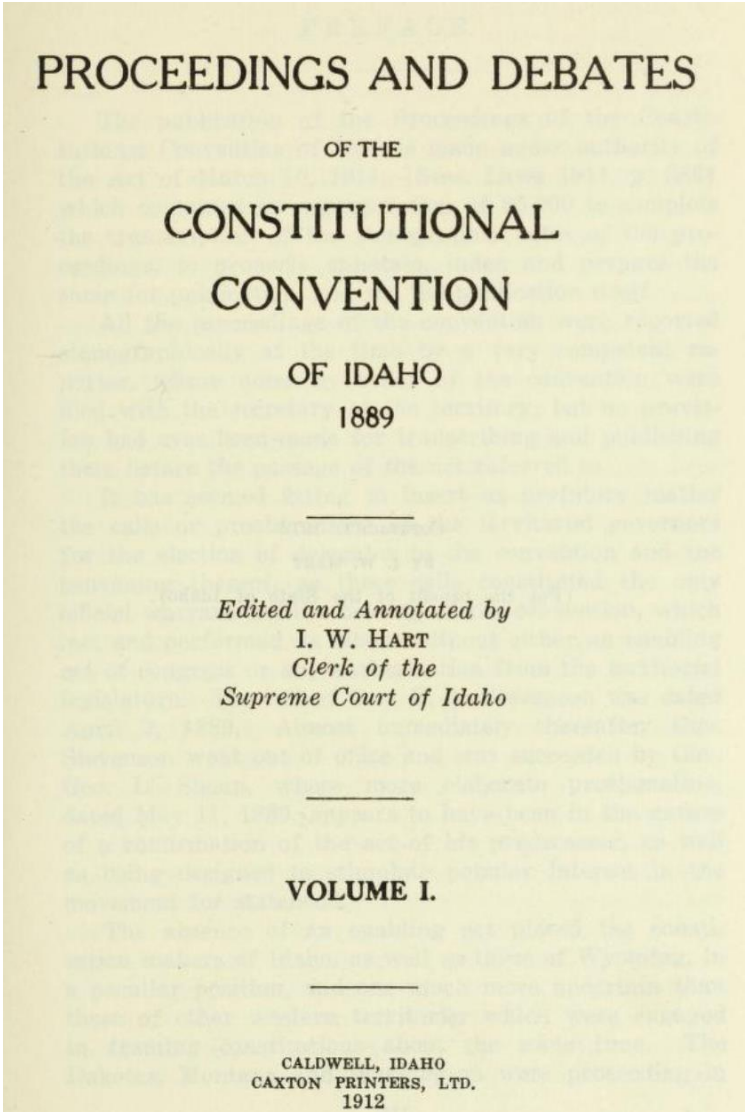
Prosecution by Information vs. Indictment

Judge Blackstone, in his Commentaries, (vol. iv, p. 349,) thus speaks of the trial by jury : — " The antiquity and excellence of this trial for the settling of civil property has before been explained at large. And it will hold much stronger in criminal cases ; since in times of difficulty and danger more is to be apprehended from the violence and partiality of judges, appointed by the crown, in suits between the king and subjects, than in disputes between one individual and another to settle the metes and boundaries of private property. Our law has therefore wisely placed this strong and twofold barrier, of a [indictment] presentment and trial by jury, between the liberties of the people and the prerogative of the crown."

Mr. REID. I will ask the gentleman if he does not know, that on account of the constitutional provision that even the nation has, the government never allows the district attorney to prefer an information without trial by jury for a crime higher than a misdemeanor, because it trenches on the right of trial by jury? …]

[…When we came into this convention and took our oaths, we said that we would support the constitution of the United States; and yet in this seventh amendment it shows that it preserved to the people the right of trial by jury. Under the fifth, in any case of felony or infamous crime a man should never be tried unless on presentment or indictment of a grand jury, and yet this committee have actually put in this report that even in infamous crimes men may be prosecuted on the information of the prosecuting officer only, when the constitution, by the light of the Declaration, says it shall not be done. Gentlemen, the people value these rights. You have made one innovation, and I raise my voice in warning now. Gentlemen may say: Here, you want to make a political record." I want to make none; I intend to make none; I want no office in the gift of the people. 1 intend to pursue my occupation as an ordinary citizen; as an ordinary citizen I value these rights, and I intend to raise my voice against it…]


PROCEEDINGS AND DEBATES

OF THE

CONSTITUTIONAL CONVENTION

OF IDAHO

1889

Edited and Annotated by
I. W. HART
Clerk of the
Supreme Court of Idaho

VOLUME I.

CALDWELL, IDAHO
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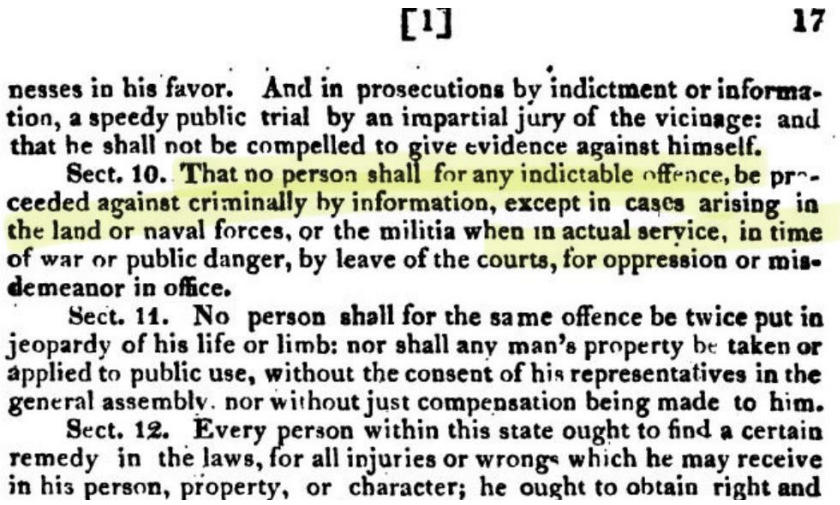

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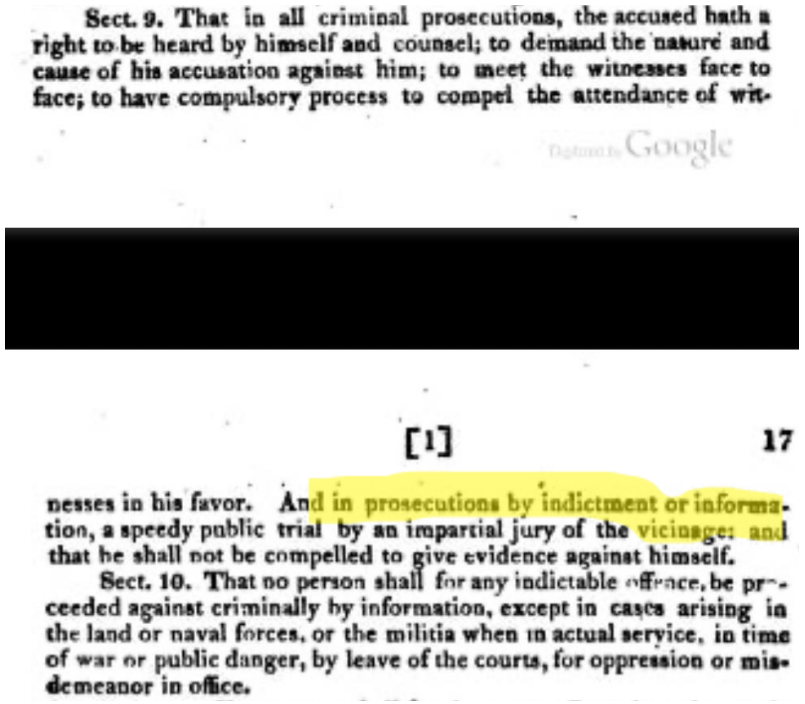
nesses in his favor. And in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: and that he shall not be compelled to give evidence against himself.

Sect. 10. That no person shall for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, in time of war or public danger, by leave of the courts, for oppression or misdemeanor in office.

Sect. 11. No person shall for the same offence be twice put in jeopardy of his life or limb: nor shall any man's property be taken or applied to public use, without the consent of his representatives in the general assembly, nor without just compensation being made to him.

Sect. 12. Every person within this state ought to find a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property, or character; he ought to obtain right and



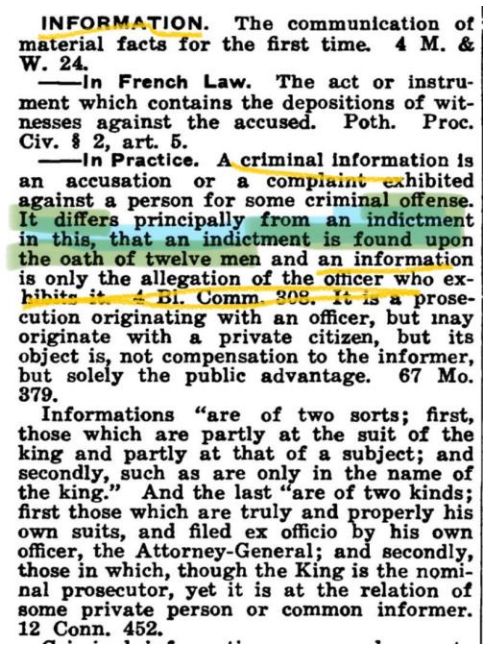
Sect. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of his accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of wit-

[redacted]

[1] 17

nesses in his favor. And in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: and that he shall not be compelled to give evidence against himself.

Sect. 10. That no person shall for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, in time of war or public danger, by leave of the courts, for oppression or misdemeanor in office.



INFORMATION. The communication of material facts for the first time. 4 M. & W. 24.

——**In French Law.** The act or instrument which contains the depositions of witnesses against the accused. Poth. Proc. Civ. § 2, art. 5.

——**In Practice.** A criminal information is an accusation or a complaint exhibited against a person for some criminal offense. It differs principally from an indictment in this, that an indictment is found upon the oath of twelve men and an information is only the allegation of the officer who exhibits it. 4 Bl. Comm. 308. It is a prosecution originating with an officer, but may originate with a private citizen, but its object is, not compensation to the informer, but solely the public advantage. 67 Mo. 379.

Informations "are of two sorts; first, those which are partly at the suit of the king and partly at that of a subject; and secondly, such as are only in the name of the king." And the last "are of two kinds; first those which are truly and properly his own suits, and filed ex officio by his own officer, the Attorney-General; and secondly, those in which, though the King is the nominal prosecutor, yet it is at the relation of some private person or common informer. 12 Conn. 452.

Sect. 10.
That no person shall for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, at time of war or public danger, by leave of the courts, for oppression or misdemeanor in office.

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take any money, reward or promise of reward for himself or to the use of any other, without order or consent of the court aforesaid, and shall be thereof convicted, shall stand on the pillory for any time not exceeding six hours, and for ever be disabled to pursue, or be plaintiff or informer in any suit or information, upon any statute popular or penal, and shall also forfeit and pay into the territorial treasury any sum not exceeding forty dollars.

Collusion.

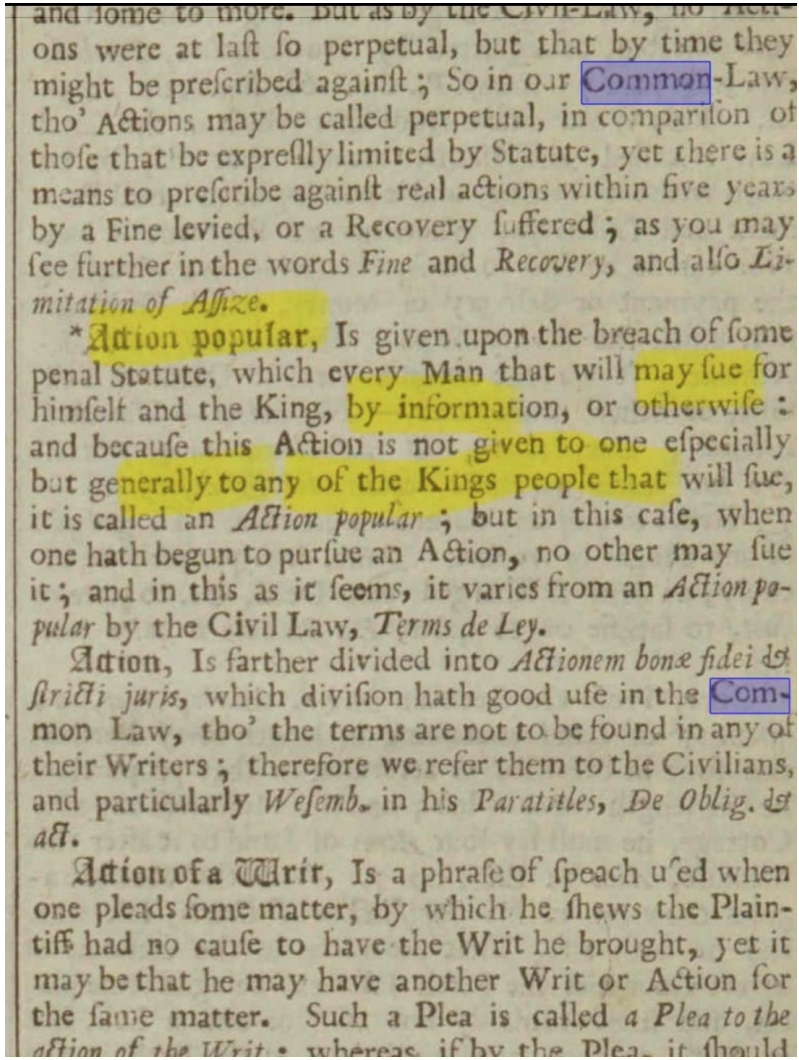
Sec. 17. *And be it further enacted*, That if any person hereafter, sue with good faith any action popular, and any defendant in the same action plead any manner of recovery by action popular, in bar of the said action, or that he before time barred any plaintiff in any action popular; then the plaintiff in the action taken with good faith, may aver that the said recovery was had by collusion, or that the said plaintiff was barred by collusion: and if such collusion be lawfully found, the plaintiff who shall sue with good faith, shall have recovery according to the nature of the action, and execution upon the same, in like manner and effect, as if no such action aforesaid had been had: *Provided always*, That no plaintiff shall be permitted to aver any collusion in any action popular, where the point of the same action, or else the collusion has been once tried or lawfully found with the plaintiff or against him, by trial of twelve men, and not otherwise.

CHAP. III.

AN ACT *directing the manner of employing prober*

Action popular, Is given upon the breach of some penal Statute, which every Man that will may sue for himself and the King, by information, or otherwise : and because this Action is not given to one especially but generally to any of the Kings people that will sue, it is called an Action popular

Mississippi 1807, Actions Popular, Statutes popular, informations



ons were at laſt ſo perpetual, but that by time they might be preſcribed againſt; So in our Common-Law, tho' Actions may be called perpetual, in compariſon of thoſe that be expreſſly limited by Statute, yet there is a means to preſcribe againſt real actions within five years by a Fine levied, or a Recovery ſuffered; as you may ſee further in the words *Fine* and *Recovery*, and alſo *Limitation of Aſſize*.

*Action popular, Is given upon the breach of ſome penal Statute, which every Man that will may ſue for himſelf and the King, by information, or otherwiſe : and becauſe this Action is not given to one eſpecially but generally to any of the Kings people that will ſue, it is called an *Action popular*; but in this caſe, when one hath begun to purſue an Action, no other may ſue it; and in this as it ſeems, it varies from an *Action popular* by the Civil Law, *Terms de Ley*.

Action, Is farther divided into *Actionem bonæ fidei & ſtricti juris*, which diviſion hath good uſe in the Common Law, tho' the terms are not to be found in any of their Writers; therefore we refer them to the Civilians, and particularly *Weſemb.* in his *Paratitles*, *De Oblig. & act.*

Action of a Writ, Is a phraſe of ſpeach uſed when one pleads ſome matter, by which he ſhews the Plaintiff had no cauſe to have the Writ he brought, yet it may be that he may have another Writ or Action for the ſame matter. Such a Plea is called *a Plea to the action of the Writ*; whereas if by the Plea it ſhould

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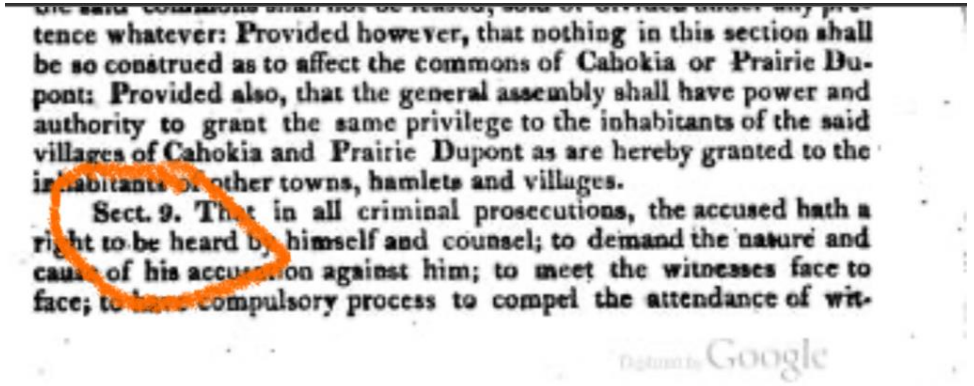
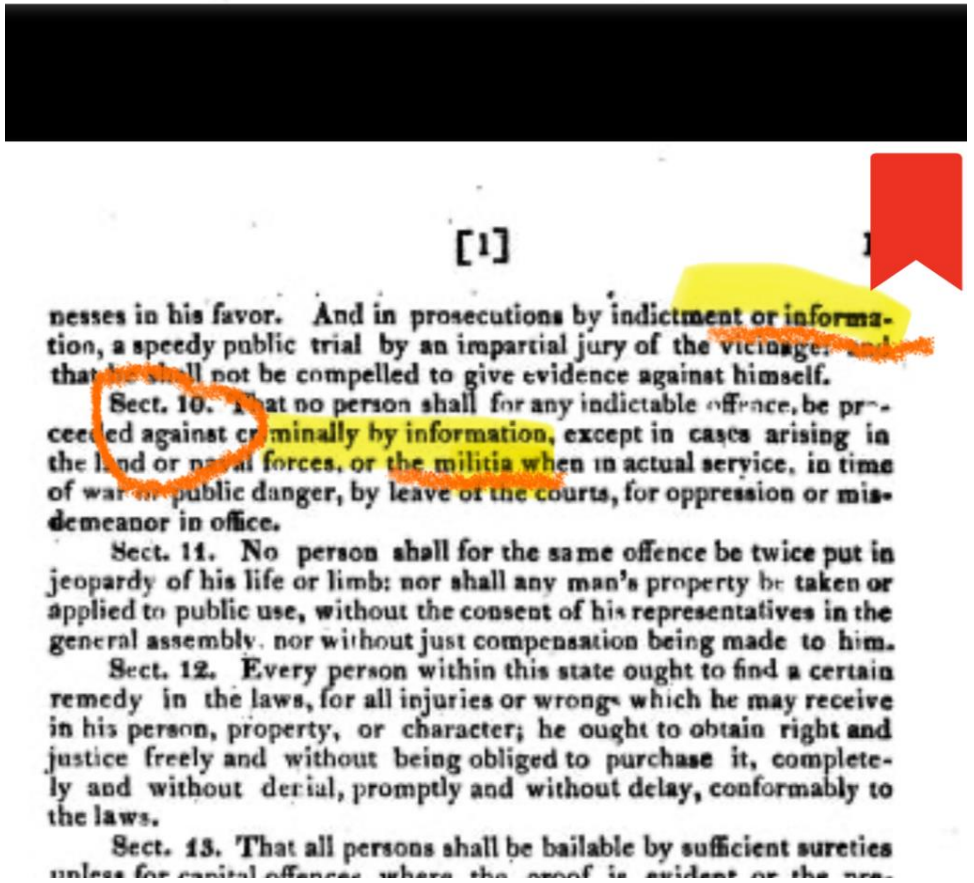
Sec. 9. And in prosecutions by indictment or information…]



tence whatever: Provided however, that nothing in this section shall be so construed as to affect the commons of Cahokia or Prairie Dupont: Provided also, that the general assembly shall have power and authority to grant the same privilege to the inhabitants of the said villages of Cahokia and Prairie Dupont as are hereby granted to the inhabitants of other towns, hamlets and villages.

Sect. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of his accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of wit-

Sec. 10. No person shall for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service…]



[1]

nesses in his favor. And in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; and that he shall not be compelled to give evidence against himself.

Sect. 10. That no person shall for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, in time of war or public danger, by leave of the courts, for oppression or misdemeanor in office.

Sect. 11. No person shall for the same offence be twice put in jeopardy of his life or limb: nor shall any man's property be taken or applied to public use, without the consent of his representatives in the general assembly, nor without just compensation being made to him.

Sect. 12. Every person within this state ought to find a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property, or character; he ought to obtain right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

Sect. 13. That all persons shall be bailable by sufficient sureties unless for capital offences, where the proof is evident or the pre-

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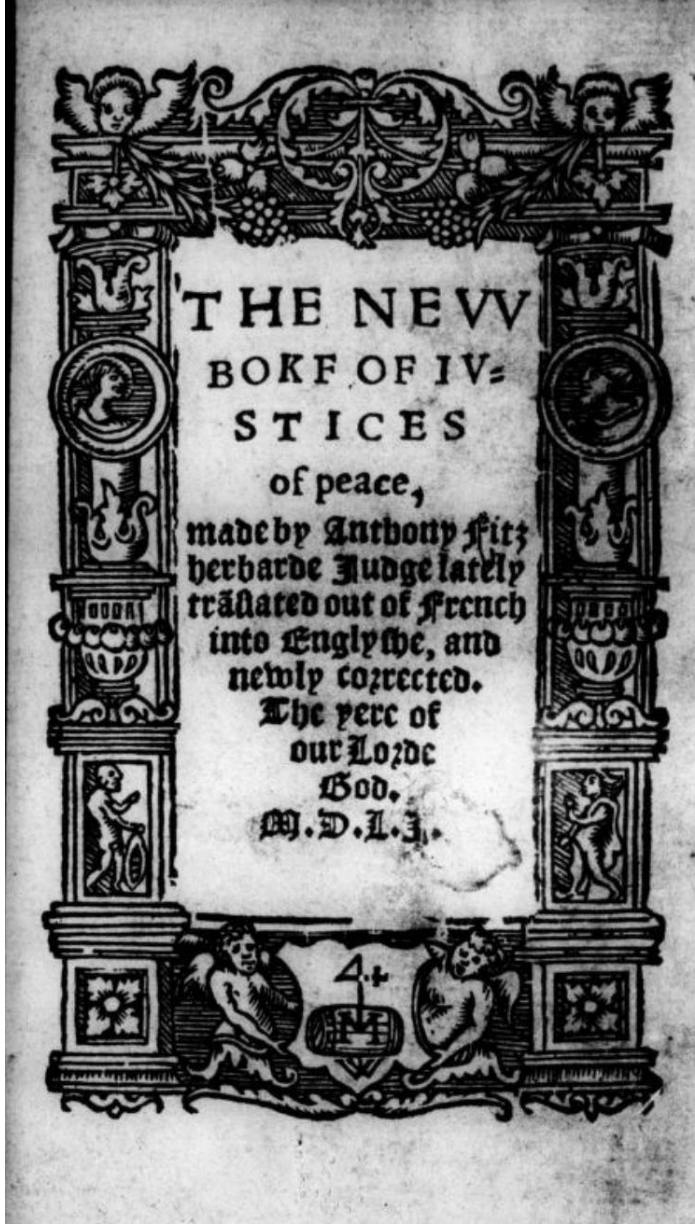
Bills of Attainder

Justices of the Peace

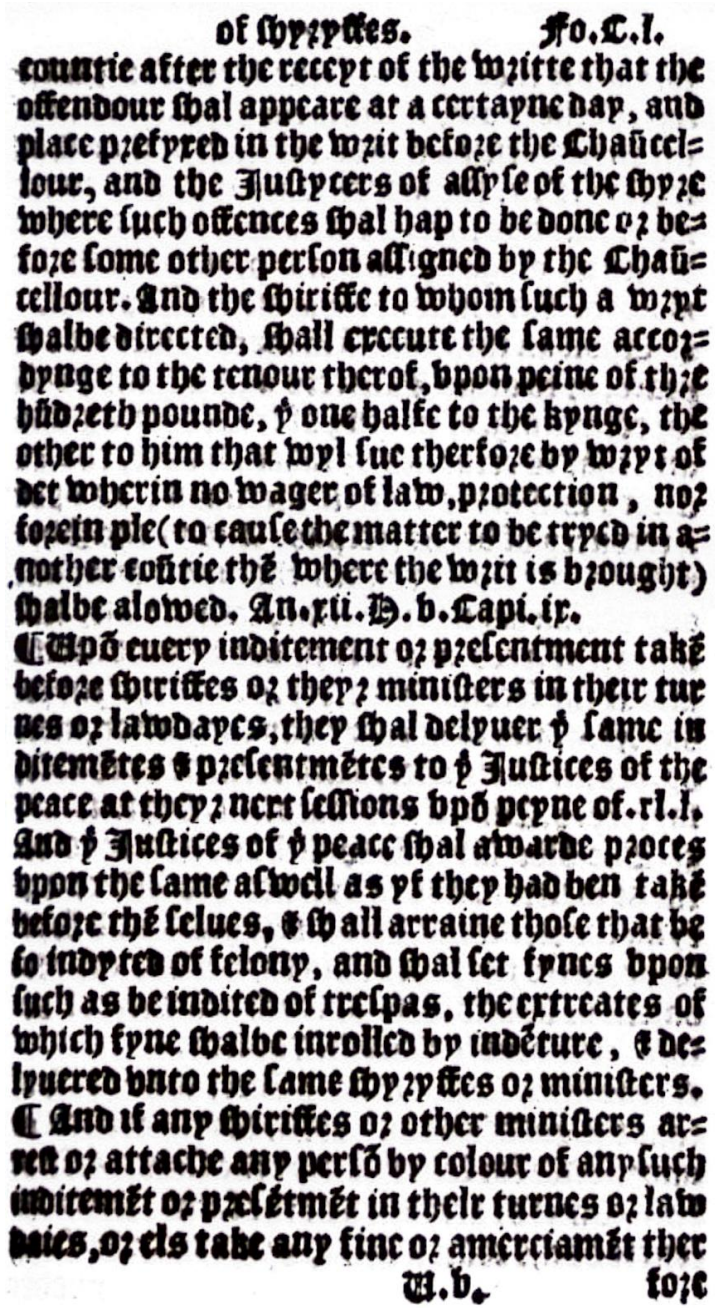

THE NEVV
BOKE OF IV-
STICES
of peace,
made by Anthony Fitz
herbarde Iudge lately
trãslated out of French
into Englythe, and
newly corrected.
The yere of
our Lorde
God.
M.D.L.I.

https://archive.org/details/bim_early-english-books-1475-1640_the-new-boke-of-justices_fitzherbert-sir-anthony_1531

The new boke of justices of peace
1551
Sir Anthony Fitzheart

Upon every indictment or presentment take before sherrifs .. blah blah

(next page) informations blah blah



of shyrykes. Fo.L.l.
countie after the receyt of the wzitte that the offendour shal appeare at a certayne day, and place prefyxed in the wzit before the Chaũcellour, and the Justyces of assyse of the shyre where such offences shal hap to be done or before some other person assigned by the Chaũcellour. And the shiriffe to whom such a wzyt shalbe directed, shall execute the same accordynge to the tenour therof, vpon peine of thre hũdzeth pounde, ỹ one halfe to the kynge, the other to him that wyl sue therfore by wzyt of det wherin no wager of law, protection, nor forein ple (to cause the matter to be tryed in another couũtie thẽ where the wzit is brought) shalbe alowed. An.xii.H.b.Capi.ix.
¶ Upõ euery inditement or presentment takẽ before shiriffes or they? ministers in their turnes or lawdayes, they shal delyuer ỹ same in ditemẽtes & presentmẽtes to ỹ Justices of the peace at they? nexte sessions vpõ peyne of.xl.l. And ỹ Justices of ỹ peace shal awarde proces vpon the same aswell as yf they had ben takẽ before thẽ selues, & shall arraine those that be so indyted of felony, and shal set fynes vpon such as be indited of trespas, the extreates of which fyne shalbe inrolled by indẽture, & delyuered vnto the same shyryffes or ministers.
¶ And if any shiriffes or other ministers arrest or attache any persõ by colour of any such inditemẽt or presẽtmẽt in their turnes or lawdaies, or els take any fine or amerciamẽt ther

W.b. fore

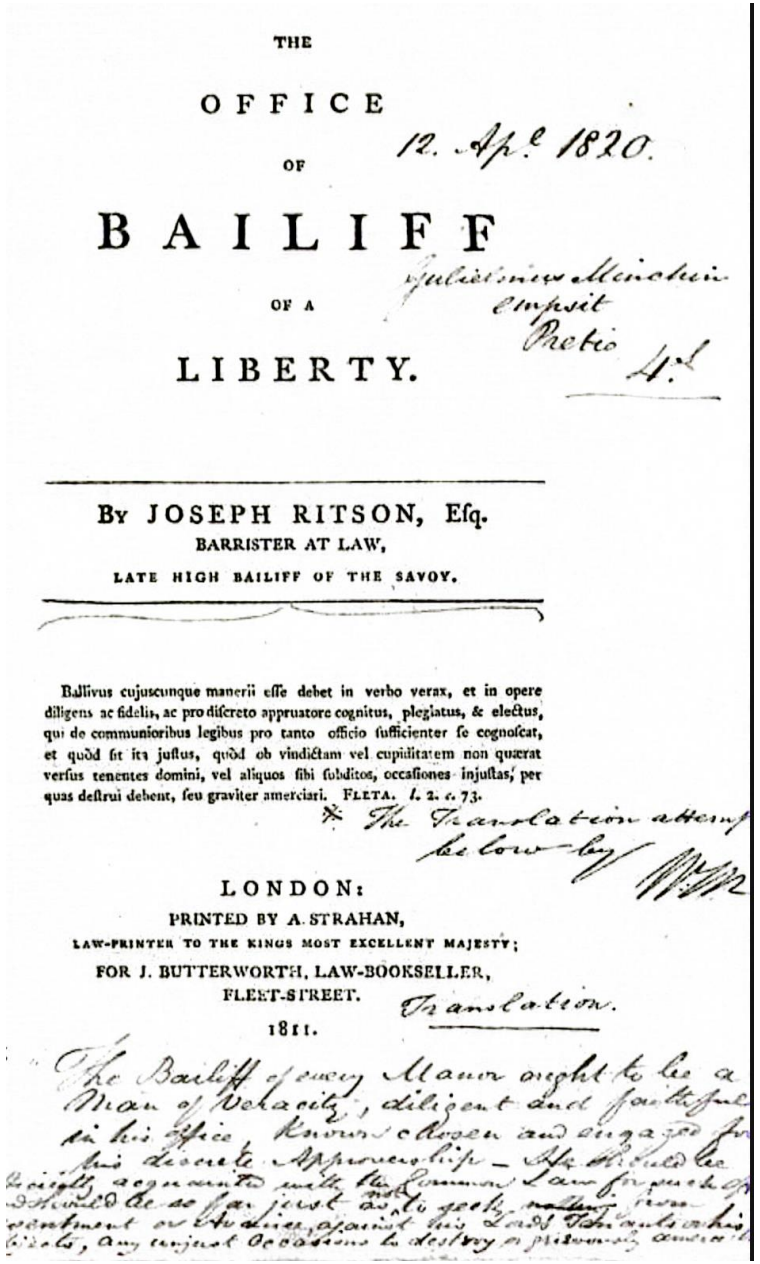
The new boke of justices of peace,... 1551 : Fitzherbert, Sir Anthony : Free Download, Borrow, and Streaming : Internet Archive

Sheriff & Bailiff of a Libertie

The sheriff was originally elected by the freeholders or suitors of the great Court Baron of the county, commonly called the County Court; the bailiff by the freeholders of the hundred or manor, suitors to the Court Baron of each division: and when the right of election in the former case was wrested from the people by the Norman tyrants, the same right in the latter case was usurped by the lord of the hundred or manor. The sheriff presided as judge in the folkmote or leet of the county, the bailiff in that of the hundred or manor. The former sat as principal executive officer of the County Court; the bailiff, of the Court Baron; the freeholders or suitors being the judges in each to this day: and though both seem to have been {xiv}anciently considered as the Kings courts, yet offences were in one alledged to be *contra pacem ballivi*, and in the other *contra pacem vicecomiti* [against the peace of the bailiff, and in the other against the peace of the sheriff]

https://archive.org/details/officeofbailiffo00ritsrich

The Office of Bailiff of a Liberty by Joseph Ritson



THE

OFFICE

OF

12. Apr.l 1820.

BAILIFF

OF A

LIBERTY.

By JOSEPH RITSON, Esq.

BARRISTER AT LAW,

LATE HIGH BAILIFF OF THE SAVOY.

Ballivus cujuscunque manerii esse debet in verbo verax, et in opere diligens ac fidelis, ac pro discreto appruatore cognitus, plegiatus, & electus, qui de communioribus legibus pro tanto officio sufficienter se cognoscat, et quòd sit ita justus, quòd ob vindictam vel cupiditatem non quærat versus tenentes domini, vel aliquos sibi subditos, occasiones injustas, per quas destrui debent, seu graviter amerciari. FLETA. l. 2. c. 73.

LONDON:

PRINTED BY A. STRAHAN,

LAW-PRINTER TO THE KINGS MOST EXCELLENT MAJESTY;

FOR J. BUTTERWORTH, LAW-BOOKSELLER,

FLEET-STREET.

1811.

Translation.

Sheriff

https://lawlibrary.wm.edu/wythepedia/index.php/Officium_Vicecomitum

Officium vicecomitum : The office and avthoritie of sherifs. Written for the better incouragement of the gentrie (vpon whom the burthen of this office lyeth) to keepe their continuall care of the businesse, and eye ouer their officers, they may the better discharge their dutie to God, their prince, and countrey, in the execution of this their office. Gathered ovt of the statutes, and bookes of the common lawes of this kingdome

1623; London : Printed for the Companie of Stationers

Listed in the Jefferson Inventory of Wythe's Library as *Dalton's office of Sheriff. fol* and given by Thomas Jefferson to Dabney Carr. We do not know which edition Wythe owned. The Brown Bibliography[5] includes the 1700 edition based on the existence of this edition in Thomas Jefferson's library. George Wythe's Library on LibraryThing indicates "Precise edition unknown. Folio editions were published at London in 1670, 1682, and 1700." The 1623 edition owned by The Wolf Law Library is also a folio edition.]

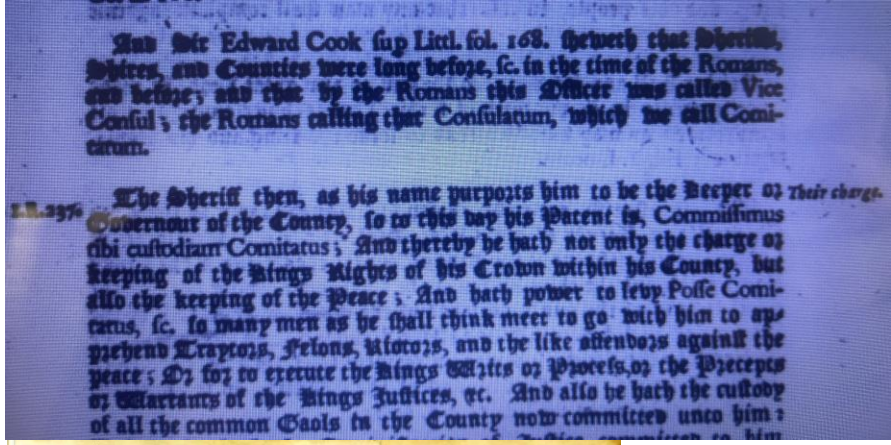
Michael Dalton (1564 – 1644), an English barrister and legal writer, was born in Linton, Cambridgeshire in 1564.[1] He was accepted to Lincoln's Inn in 1671 and called to the bar in 1589. In 1604, he became deputy steward of the University of Cambridge and in 1618, published *The Countrey Justice*, a treatise for local magistrates which became quite popular.[2] Dalton remains "historically significant" for this contribution. He followed that publication with another legal treatise in 1623, *Vicecomitum, or, The Office and Authoritie of Sheriffs*, which also proved successful, appearing in an abridged version in 1628 and multiple reprintings as late as 1700. In fact, "in spite of a growing number of rivals, it continued to be a standard authority till the beginning of the eighteenth century.]

Evidence for Inclusion in Wythe's Library

Pg. 5 […And Sir Edward Cook sup. Littl. fol. 168. Sheweth that Sheriffs, Shires, and Counties were long before, fc, in the time of the Romans, and before; and that by the Romans this officer was called Vice Consul; the Romans calling that Consulatum, which we call Comitatum.

The sheriff then, as his name purports is to be the keeper

Of government of the County…]



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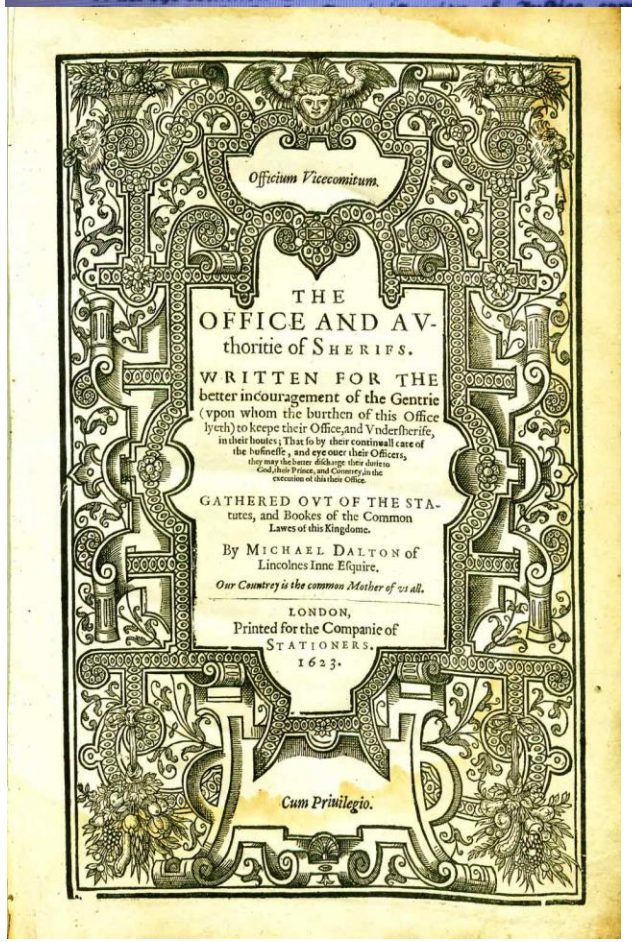
The Sheriff then, as his name purports him to be the Keeper of Their charge.
Governour of the County, so to this day his Patent is, Commissimus tibi custodiam Comitatus; And thereby he hath not only the charge of keeping of the Kings Rights of his Crown within his County, but also the keeping of the Peace; And hath power to levy Posse Comitatus, fc. so many men as he shall think meet to go with him to apprehend Traytors, Felons, Rioters, and the like offendors against the peace; Or for to execute the Kings Writs or Precepts, or the Precepts of Warrants of the Kings Justices, fc. And also he hath the custody of all the common Gaols in the County now committed unto him;



Officium Vicecomitum.

THE OFFICE AND AVthoritie of SHERIFS.

WRITTEN FOR THE better incouragement of the Gentrie (vpon whom the burthen of this Office lyeth) to keepe their Office, and Vndersherife, in their houses; That so by their continuall care of the businesse, and eye ouer their Officers, they may the better discharge their duties to God, their Prince, and Country, in the execution of this their Office.

GATHERED OVT OF THE STAtutes, and Bookes of the Common Lawes of this Kingdome.

By MICHAEL DALTON of Lincolnes Inne Esquire.

Our Country is the common Mother of vs all.

LONDON, Printed for the Companie of STATIONERS, 1623.

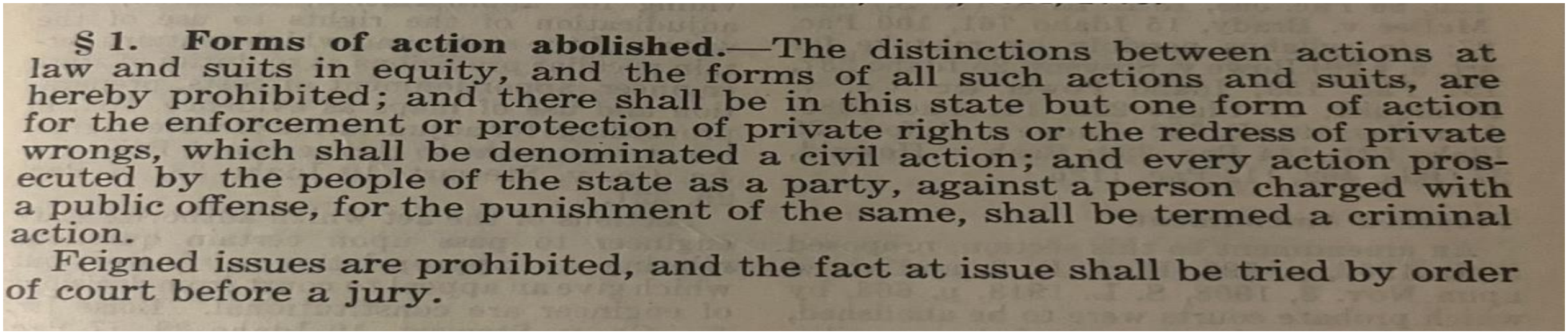
Cum Privilegio.

https://archive.org/details/bim_early-english-books-1641-1700_officium-vicecomitum_dalton-michael_1682/mode/2up

Actions, Proceeding

§1. Forms of action abolished.-The distinctions between **actions at law** and **suits in equity**, and **the forms of all** such actions and suits, are hereby **prohibited**; and there shall be in this state but one form of action for the enforcement or protection of **private rights or the redress of private wrongs, which shall be denominated a civil action**; and every action prosecuted by the people of the state as a party, against a person charged with a public offense, for the punishment of the same, shall be termed a **criminal action**...]
Idaho Code Annotated, 1932, Civil Procedure, Vol 1

Abrogates Common Law Actions for Man to redress/prosecute his own claims
Redefines "the people"
Abrogation/restriction/Conflation of Actions between Men in the Private and officials in the Public



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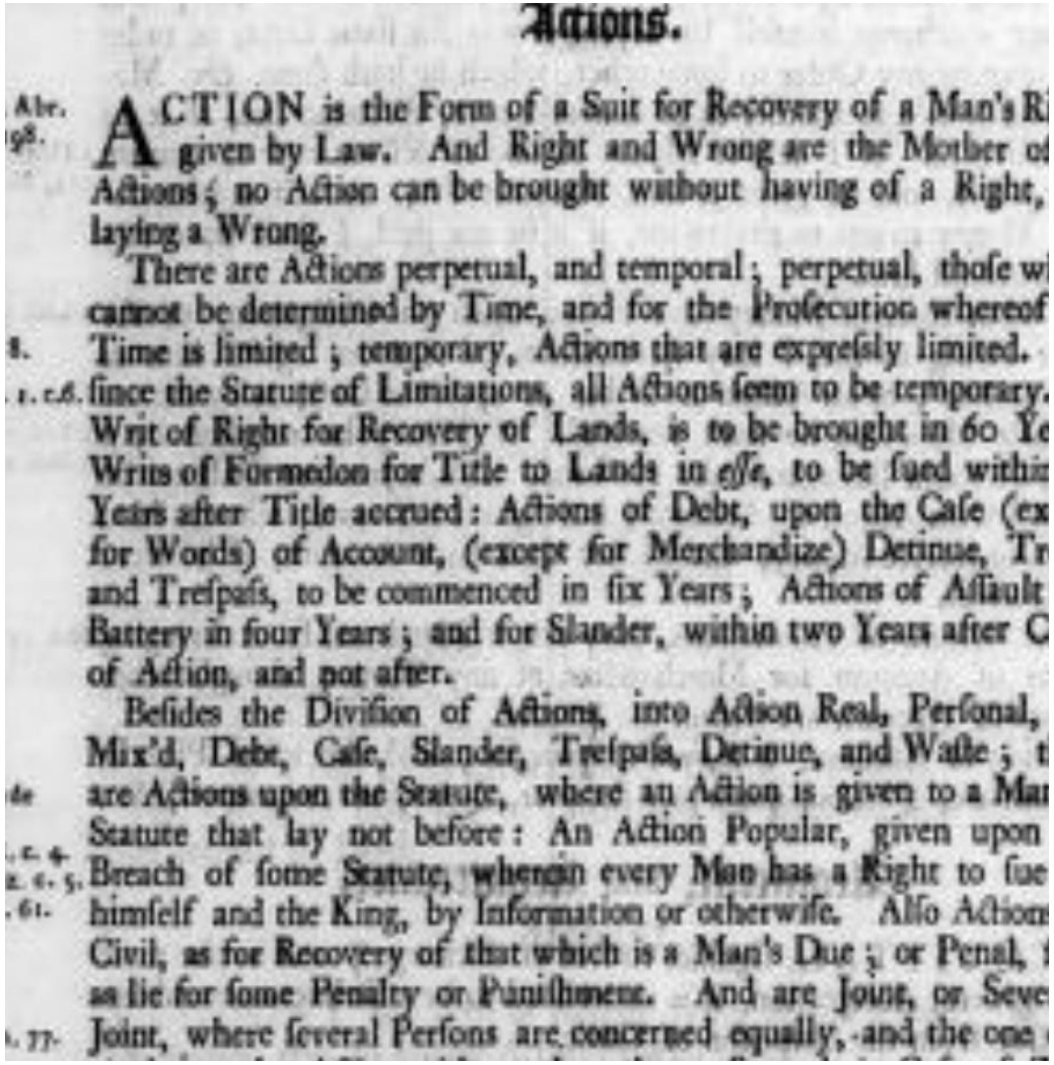
Feigned issues are prohibited, and the fact at issue shall be tried by order of court before a jury.

[And that they and their Successors shall be from henceforth forever enabled to take, acquire, and purchase by the Name aforesaid (Licence for the same from Us, our Heirs, and Successors, first had and obtained) any Manner of Lands, Tenements, and Hereditaments, Goods and Chatties, within our Realm of England, and Dominion of Wales. And that they, and their Successors, shall likewise be enabled by the Name aforesaid, to plead and be impleaded, before any of our Judges or Justices in any of our Courts, and in any Actions or Suits whatsoever.

Documents illustrative of American history, 1606-1863
Howard Preston
https://archive.org/details/documentsillust00unkngoog

first Colony in Virginia. And that they and their Successors shall be from henceforth forever enabled to take, acquire, and purchase by the Name aforesaid (Licence for the same from Us, our Heirs, and Successors, first had and obtained) any Manner of Lands, Tenements, and Hereditaments, Goods and Chattles, within our Realm of England, and Dominion of Wales. And that they, and their Successors, shall likewise be enabled by the Name aforesaid, to plead and be impleaded, before any of our Judges or Justices in any of our Courts, and in any Actions or Suits whatsoever. And we do also of our special Grace, certain Knowledge, and mere Motion, give, grant

THE COMMON LAW COMMON-PLAC'D: CONTAINING, THE SUBSTANCE AND EFFECT OF ALL THE COMMON LAW CASES, ... COLLECTED AS WELL FROM ABRIDGMENTS AS REPORTS. IN A PERFECT NEW METHOD. ... THE SECOND EDITION, WITH VERY LARGE ADDITIONS. BY GILES JACOB, GENT. 1733



Actions.

Abr. 98. ACTION is the Form of a Suit for Recovery of a Man's R given by Law. And Right and Wrong are the Mother o Actions; no Action can be brought without having of a Right, laying a Wrong.

There are Actions perpetual, and temporal; perpetual, thoſe w cannot be determined by Time, and for the Proſecution whereof 8. Time is limited; temporary, Actions that are expreſsly limited. 1. c.6. ſince the Statute of Limitations, all Actions ſeem to be temporary. Writ of Right for Recovery of Lands, is to be brought in 60 Y Writs of Formedon for Title to Lands in eſſe, to be ſued withi Years after Title accrued: Actions of Debt, upon the Caſe (ex for Words) of Account, (except for Merchandize) Detinue, Tr and Treſpaſs, to be commenced in ſix Years; Actions of Aſſault Battery in four Years; and for Slander, within two Years after C of Action, and not after.

Beſides the Diviſion of Actions, into Action Real, Perſonal, Mix'd, Debt, Caſe, Slander, Treſpaſs, Detinue, and Waſte; t de are Actions upon the Statute, where an Action is given to a Ma Statute that lay not before: An Action Popular, given upon c. 4. Breach of ſome Statute, wherein every Man has a Right to ſue 2. c. 5. himſelf and the King, by Information or otherwiſe. Alſo Action 61. Civil, as for Recovery of that which is a Man's Due; or Penal, as lie for ſome Penalty or Puniſhment. And are Joint, or Seve 77. Joint, where ſeveral Perſons are concerned equally, and the one

Action is the Form of a **Suit** for Recovery of a Man's Right given by Law. And Right and Wrong are the Mother of all Actions; no Action can be brought without having of a Right, and laying a Wrong. ~~~ Scire facias, or any Writ to which the Defendant may Plead,Whereon the Plaintiff may recover, is an Action.

PROCEEDING. In its general acceptation, this word means the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgements and of executing.

1. Proceedings are ordinary and summary.

1. By ordinary proceedings are understood the regular and usual mode of carrying on, a suit by due course at common law.

2. Summary proceedings are those when the matter in dispute is decided without the intervention of a jury; these must be authorized by the legislature, except perhaps in cages of contempts, for such proceedings are unknown to the common law.

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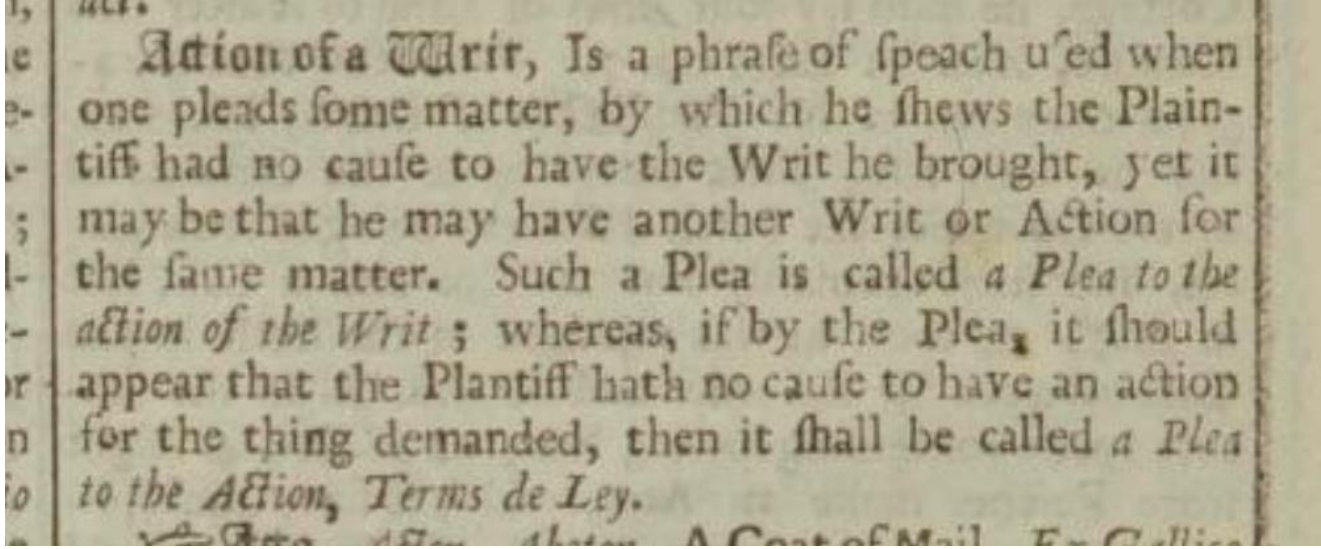
3. In Louisiana, there is a third kind of proceeding, known by the name of executory proceeding, which is resorted to in the following cases: 1. When the creditor's right arises from an act importing a confession of judgment, and which contains a privilege or mortgage in his favor. 2. When the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. Code of Practice, art. 732.

4. In New York the code of practice divides remedies into actions and special proceedings. An action is a regular judicial proceeding, in which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. Every other remedy is a special proceeding. Sec. 2.

Action of a Writ: is a phrase of speech used when one pleads some matter, by which he shews the Plaintiff had no cause to have the Writ he brought, yet it may be that he may have another Writ or Action for the same matter. Such a Plea is called a Plea to the action of the Writ whereas if by the Plea should appear that the Plaintiff hath no cause to have an action for the thing demanded, then it shall be called a Plea to the Action- Terms de Ley*



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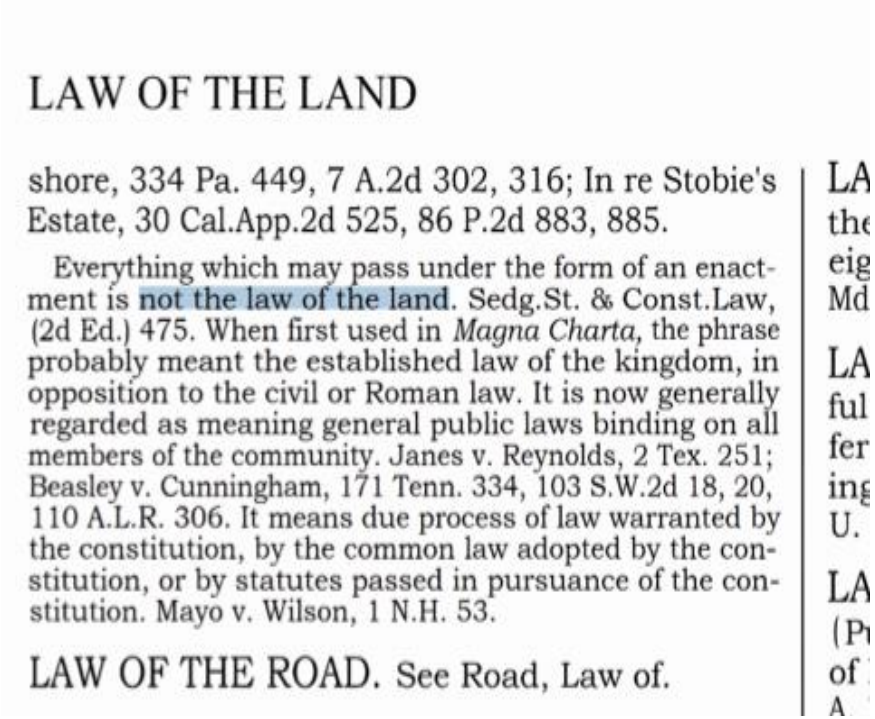
Law of the Land
Due Process, Due Course

Everything which may pass under the form of an enactment is not the law of the land. Sedg.St. & Const.Law, (2d Ed.) 475. When first used in Magna Charta, the phrase probably meant the established law of the kingdom, in opposition to the civil or Roman law.



LAW OF THE LAND

shore, 334 Pa. 449, 7 A.2d 302, 316; In re Stobie's Estate, 30 Cal.App.2d 525, 86 P.2d 883, 885.

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LAW OF THE ROAD. See Road, Law of.

Pg.510

The Revision of Federal Statutes in 1873,

which went into effect June 22, 1874, was by act of congress declared to constitute the law of the land;

the pre-existing laws were thereby repealed, and ceased to be of effect.

By subsequent acts of congress, certain errors In this revision were corrected. A new edition of the Revision of 1873 was authorized by acts of March 2, 1877, and March 9, 1878; this is not a new enactment, but merely a new publication; it contains a copy of the Revision of 1873, with certain specific alterations and amendments made by subsequent enactments of the 43d and 44th congresses, incorporated according to the judgment and discretion of the editor, under the authority of the acts providing for his appointment. These alterations, or amendments, were merely indicated by italics and brackets. The act of March 9, 1878, provides that the edition of 1878 shall be legal evidence of the laws therein contained In all the courts of the United States, and of the several states and territories, "but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by congress since the first day of December, 1873."The supplement of 1881 is official to a limited extent. The provisions in regard to it are as follows: "The publication herein authorized shall be taken to be prima facie evidence of the laws therein contained in all the courts of the United States, and of the several states and territories therein; but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by congress: Provided, that nothing herein contained shall be construed to change or alter any existing law;" 21 Stat. L. 888. See Wright V. U. S., 15 Ct CI. 80, where the subject is explained by Richardson, J., one of the compilers. Volume I, Supplement to the Revised Statutes, contains all the permanent general laws enacted from the passage of the Revised Statutes in 1874, to and including the fifty-first congress, which expired in 1891, and supersedes Vol. I., prepared under resolution of June 7, 1880. The publication is prima facie evidence of the laws therein contained in all of the courts of the United States. Vol. II. of the Supplement contains the general laws of the fifty-second and subsequent congresses.The laws of the United States relating to the judiciary were enacted into the Judicial Code, March 3, 1911, and went into effect January 1, 1912; those relating to crimes were enacted into the Criminal Code, March 4, 1909, and went into effect January 1, 1910.

https://archive.org/details/cu31924022836229

SUIT, *noun* [Latin sequor.]

See Seek. In Law Latin, secta is from the same source.] Literally, a following; and so used in the old English statutes.]

4. Retinue; a company or number of attendants or followers; attendance; train; as a nobleman and his *suit* [This is sometimes pronounced as a French word, sweet; but in all its senses, this is the same word, and the affectation of making it French in one use and English in another, is improper, not to say ridiculous.]

5. A petition; a seeking for something by petition or application.

Many shall make *suit* to thee. Job 11:19.

6. Solicitation of a woman in marriage; courtship.

7. In law**, an action or process for the recovery of a right or claim; legal application to a court for justice; prosecution of right before any tribunal; as a civil suit; a criminal suit; a *suit* in chancery.**

In England, the several suits or remedial instruments of justice, are distinguished into three kinds, actions personal, real, and mixed.

8. Pursuit; prosecution; chase.

SUIT and service, in feudal law, the duty of feudatories to attend the courts of their lords or superiors in time of peace, and in war, to follow them and perform military service.

To bring *suit* a phrase in law, denoting literally to bring **secta, followers or witnesses** to prove the plaintif's demand. The phrase is antiquated, or rather it has changed its signification; for **to bring a *suit* now is to institute an action**.

SUITOR, *noun* One that **sues** or **prosecutes** a **demand of right** in law, as a plaintiff, petitioner or appellant.

1. One who attends a court, whether plaintiff, defendant, petitioner, appellant, witness, juror and the like. These, in legal phraseology, are all included in the word suitors.

2. A petitioner; an applicant.]

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SUITOR, *noun* One that sues or **prosecutes a demand of right** in law, as a plaintiff, petitioner or appellant.

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2. A petitioner; an applicant.

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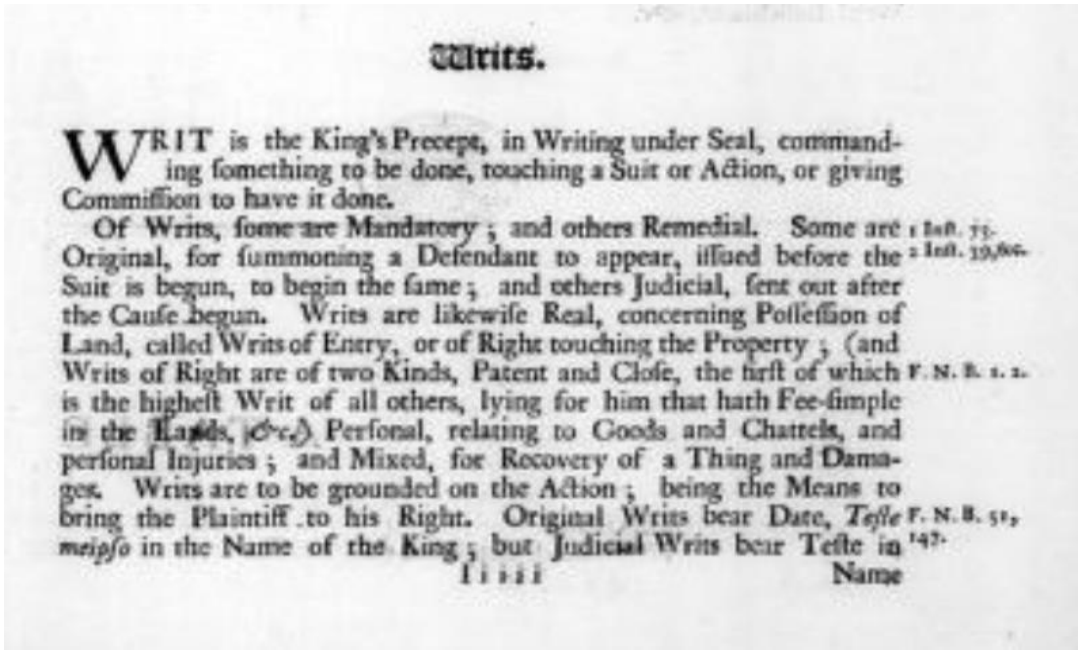
SUE, *verb transitive* su. [Latin sequor. See Seek and Essay.]

1. To seek justice or right from one by legal process; to institute **process** in law against one; to **prosecute** in a civil **action** for the recovery of a real or supposed right; as, to *sue* one for debt; to *sue* one for damages in trespass. Matthew 5:40.

WRITS

Writ is the King's precept commanding something to be done, touching a Suit or Action, or giving Commission to have it done.
Of Writs, some are Mandatory ; and others Remedial.
Some Original, for summoning a Defendant to appear, issued before the suit is begun, to begin the same; and others Judicial, sent out after the Cause begun.
Writs are likewise Real, concerning Possession of Land, called Writs of Entry, or of Right touching the Property.
Writs of Right are of two Kinds, Patent and Close, the first of which is the highest Writ of all others, lying for him that hath Fee-fin in the Land, Etc.
Personal. relating to Goods and Chattels, personal Injurious; and Mixed, for Recovery of a Thing and
damages.
Writs are to be grounded on the Action; being the Means to bring the Plaintiff to his Right. Original Writs bear Date, "teste meipso" in the Name of the King, but Judicial Writs bear teste in the name of the Chief Justice



Writs.

WRIT is the King's Precept, in Writing under Seal, commanding something to be done, touching a Suit or Action, or giving Commission to have it done.

Of Writs, some are Mandatory ; and others Remedial. Some are Original, for summoning a Defendant to appear, issued before the Suit is begun, to begin the same ; and others Judicial, sent out after the Cause begun. Writs are likewise Real, concerning Possession of Land, called Writs of Entry, or of Right touching the Property ; (and Writs of Right are of two Kinds, Patent and Close, the first of which is the highest Writ of all others, lying for him that hath Fee-simple in the Lands, &c.) Personal, relating to Goods and Chattels, and personal Injuries ; and Mixed, for Recovery of a Thing and Damages. Writs are to be grounded on the Action ; being the Means to bring the Plaintiff to his Right. Original Writs bear Date, *Teste meipso* in the Name of the King ; but Judicial Writs bear Teste in Name

1 Inst. 73.
2 Inst. 39,66.
F. N. B. 1. 2.
F. N. B. 51, 147.

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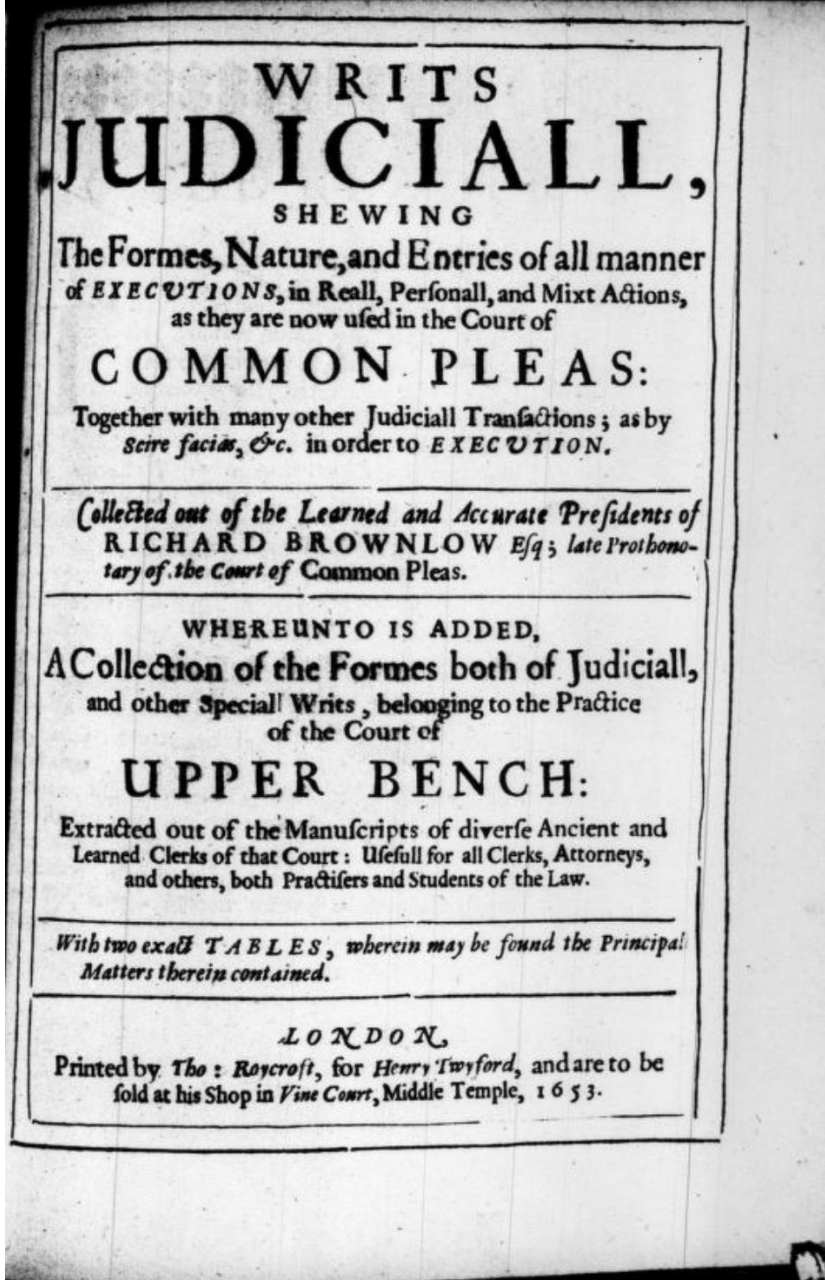

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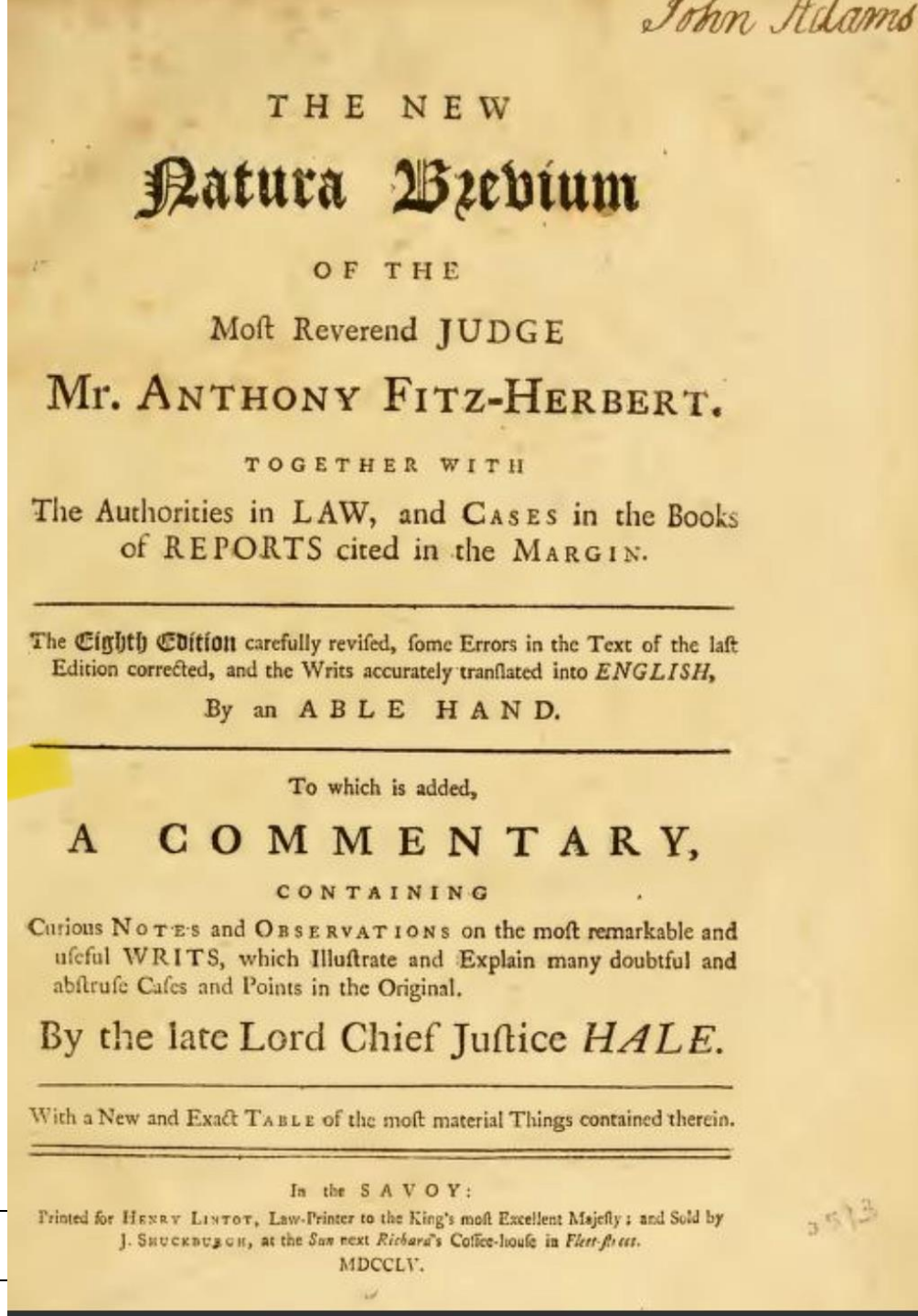

John Adams

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OF THE

Moſt Reverend JUDGE

Mr. ANTHONY FITZ-HERBERT.

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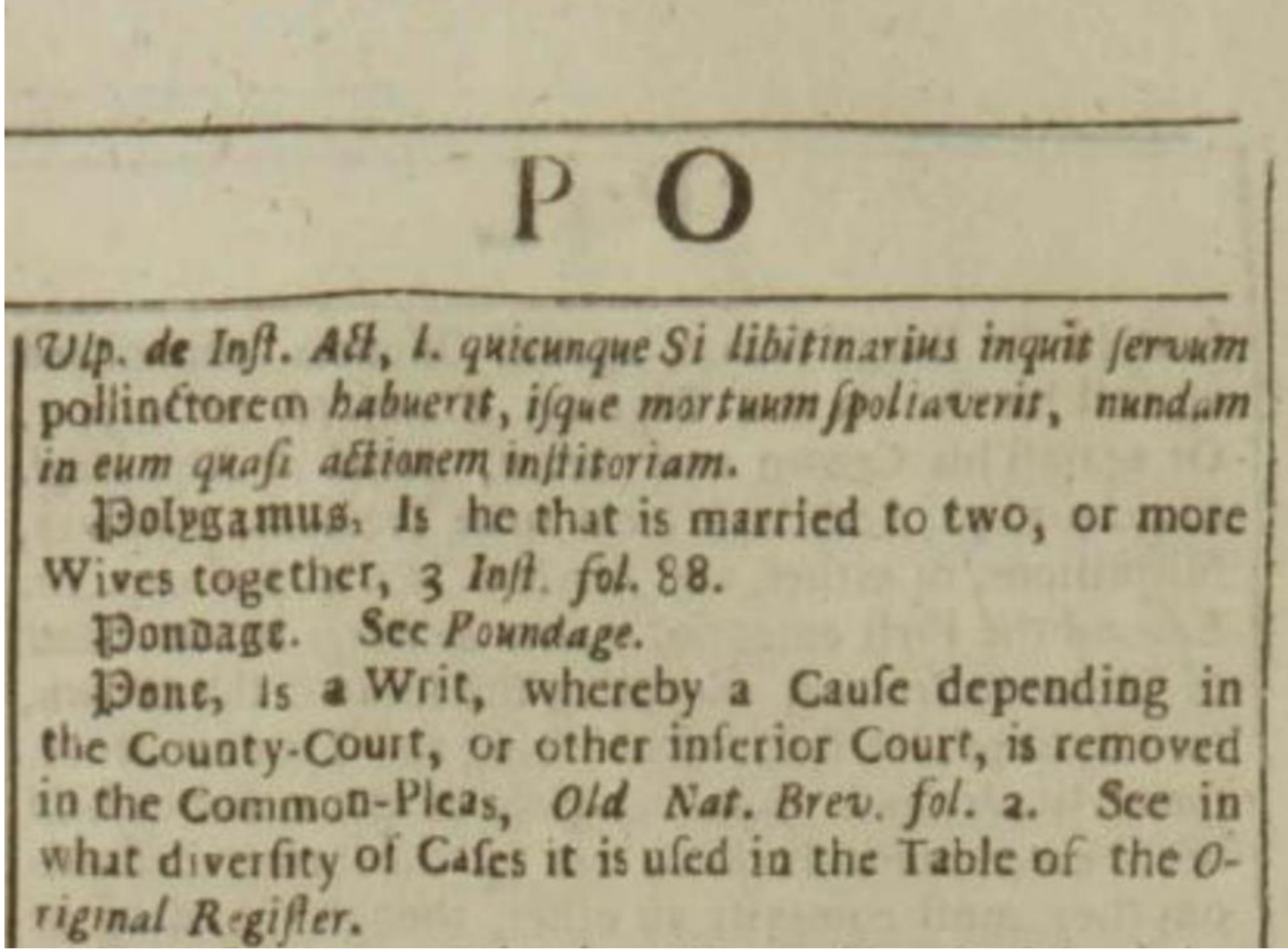
Pont, is a Writ, whereby a Cause depending in the County-Court, or other inferior Court, is removed in the Common- Pleas, Old Nat, Brev. fol a. Sec in what diversity of Cases it is used in the Table of the Original Register



P O

Ulp. de Inſt. Act, l. quicunque Si libitinarius inquit ſervum pollinctorem habuerit, iſque mortuum ſpoliaverit, nundum in eum quaſi actionem inſtitoriam.

Polygamus, Is he that is married to two, or more Wives together, 3 *Inſt. fol.* 88.

Pondage. See *Poundage.*

Pont, is a Writ, whereby a Cauſe depending in the County-Court, or other inferior Court, is removed in the Common-Pleas, *Old Nat. Brev. fol.* 2. See in what diverſity of Caſes it is uſed in the Table of the *Original Regiſter.*

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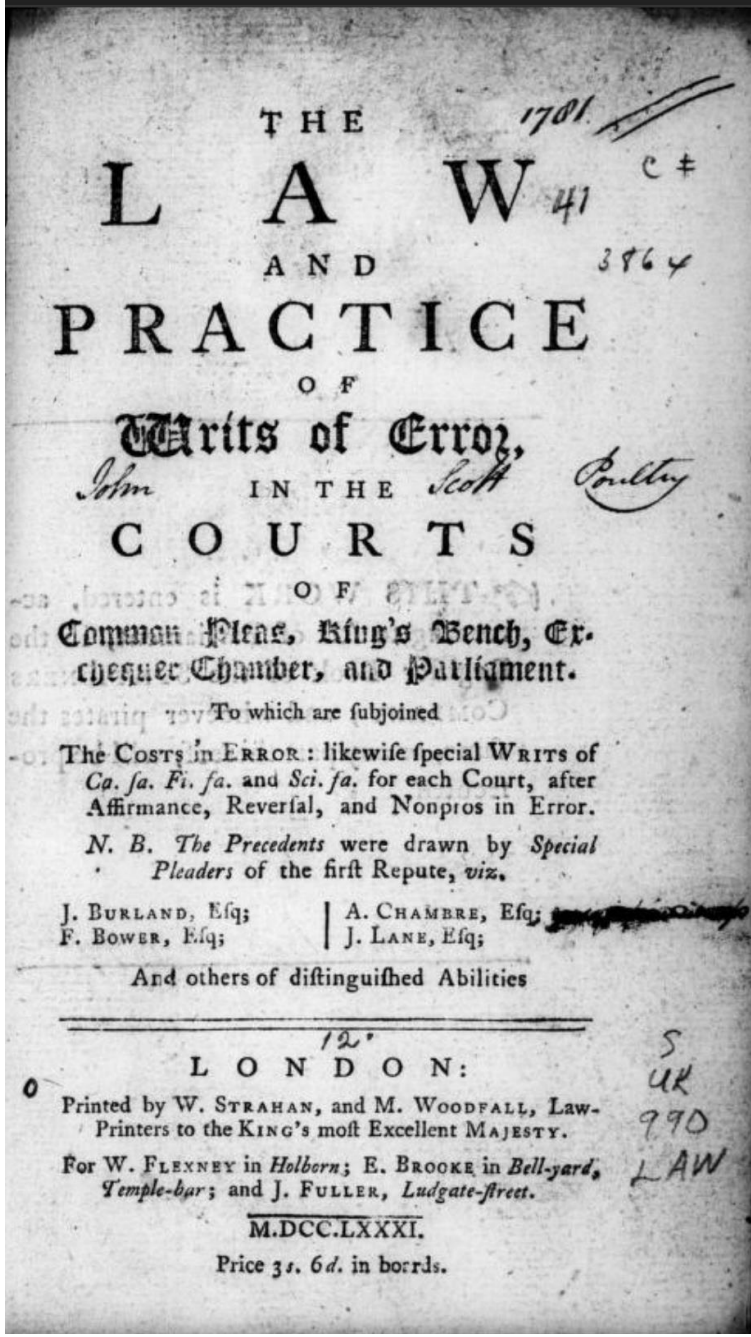
The law and practice of writs of error in the courts of Common Pleas, King's Bench, Exchequer Chamber, and Parliament. To which are subjoined the costs in error: 1781



THE 1781

LAW

AND

PRACTICE

OF

Writs of Error,

IN THE

COURTS

OF

Common Pleas, King's Bench, Exchequer Chamber, and Parliament.

To which are ſubjoined

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Writ of Error

Sec. 812, Every final judgment, order, or decision of a district court, except in chancery, may be re-examined upon a •writ of error in the same court, for error in fact ; in the supreme court, for error in law.

https://archive.org/details/lawsterritoryid00tergoog

may be reviewed by the district court. When the appeal is taken on questions of law alone, it shall be heard on a statement of the case prepared as prescribed in title nine of this act. When the appeal is taken on questions of fact, the action shall be tried anew in the district court, and either party may, on such trial, demand a jury.

SEC. 311. Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, or confirm, or modify, any or all of the proceedings subsequent to or dependent upon said judgment, and may, if necessary or proper, order a new trial. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed.

TITLE X.

CHAPTER I.

OF WRITS OF ERROR.

SEC. 312. Judgment, etc., re-examined on writ of error.
313. Time for prosecution of writ, proviso.
314. When deemed issued.
315. Notice to defendant in error, form of.
316. How served, return of.
317. Transcript of, what to contain.
318. Assigning errors and filing joinders.
319. Judgment, etc., complained of, may be affirmed or reversed.
320. Additional undertaking to pay judgment.
321. Undertaking for writ of error, form of.
322. Death of party after filing undertaking.
323. Prosecution of writ of error, reversal of judgment.
324. Not to affect title of property sold.
325. Supreme court, decision of.
326. Questions of law on special verdicts, adjourned to the supreme court.

SEC. 312. Every final judgment, order, or decision of a district court, except in chancery, may be re-examined upon a writ of error in the same court, for error in fact; in the supreme court, for error in law.

SEC. 313. Every such writ shall be prosecuted within six months, and not after. But if the party entitled to have such

writ of habeas corpus

(In England) [..."It was not until the fifteenth and sixteenth centuries that the writ of habeas corpus came into prominence. This occurred because the **common law** courts, in their struggle for power over the rival central courts the **Chancery** the Star Chamber, the High Commission, and the Admiralty used it for the purpose of obtaining jurisdiction over cases handled by the other courts and thus increasing their own importance."]

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JURISDICTION OF THE SUPREME COURT

Sec. 20. And be it further enacted, That the supreme court shall be held by two at least of the said judges:—but one judge may adjourn the court from day to day; for the space of four days. The said judges shall have full power and jurisdiction therein, to hear and determine all causes brought before them by writ of error from any court of record in this territory, all demurrers, points reserved at the trial, cases stated, special verdicts, motions in arrest of judgment and for new trials, reserved for their consideration at any circuit court in either of the aforesaid counties, and to grant judgment therein and award execution, except it be necessary in consequence of the determination of the said supreme court, that facts be ascertained or damages assessed by a jury, in which case the cause shall be remanded to the court from whence it was
brought.

consideration of the supreme court, at their next succeeding term; and in such case the supreme court shall pronounce judgment, sentence or decree, as the law directs, and award execution accordingly.

CLERKS TO BE APPOINTED.

Sec. 19. *And be it further enacted*, That a person of skill and probity shall from time to time, be appointed clerk in each of the circuit courts of Wilkinson, Adams, Jefferson and Claiborne, respectively, whose duty it shall be to do and perform all things that appertain to the duties of a clerk of the court to which he is appointed.

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Sec. 20. *And be it further enacted*, That the supreme court shall be held by two at least of the said judges:—but one judge may adjourn the court from day to day, for the space of four days. The said judges shall have full power and jurisdiction therein, to hear and determine all causes brought before them by writ of error from any court of record in this territory, all demurrers, points reserved at the trial, cases stated, special verdicts, motions in arrest of judgment and for new trials, reserved for their consideration at any circuit court in either of the aforesaid counties, and to grant judgment thereon and award execution, except it be necessary in consequence of the determination of the said supreme court, that facts be ascertained or damages assessed by a jury, in which case the cause shall be remanded to the court from whence it was brought.

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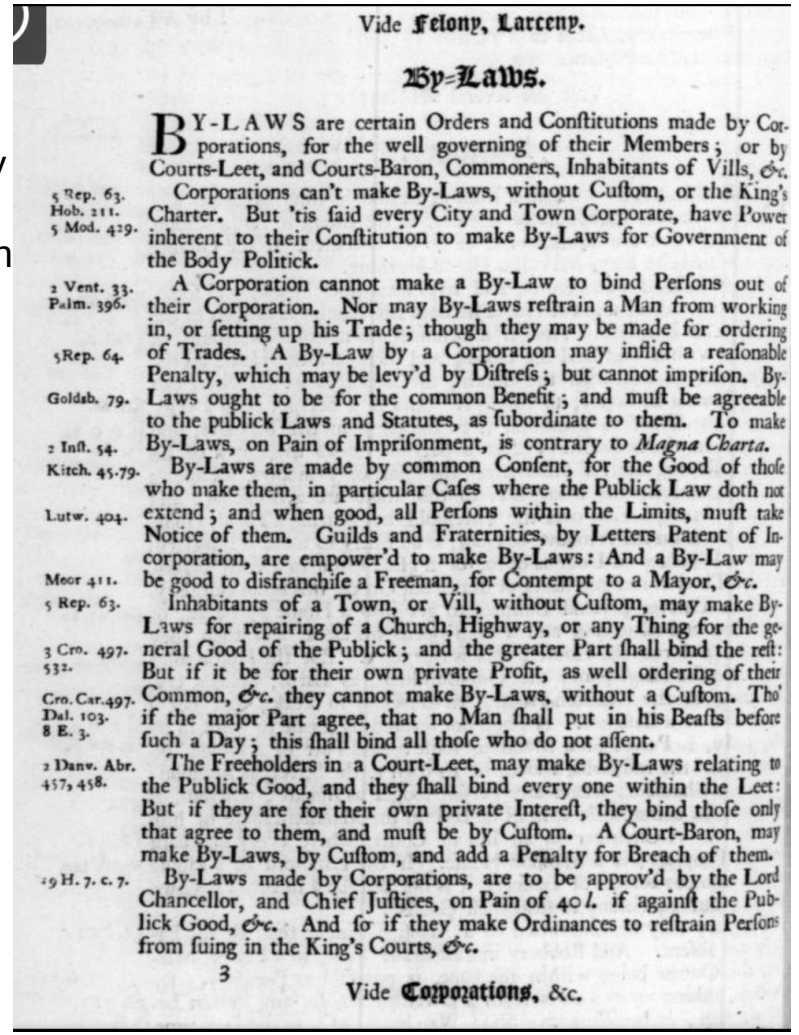
By-Law

By-laws are certain orders and constitutions made by Corporations governing for the well governing of their members; or by Courts-Leet, and Courts-Baron, Commoners, Inhabitants of Vills, Etc.
Corporations can't make By-Laws, without Custom or the King's Charter. But 'tis said every City and Town Corporate, have Power inherent to their Constitution to make By-Laws for Government of the Body Politick.
A Corporation cannot make a By-Law to bind Persons out of their Corporation. Nor may By-Laws restrain a Man from working in, or setting up his Trade; though they may be made for ordering of Trades. [contracts]
A By-Law by a Corporation may inflict a reasonable
Penalty, which may be levy'd by Distress but cannot imprison.
ByLaws ought to be for the common Benefit; and must be agreeable to the publick Laws and Statutes, as subordinate to them.
To make By-Laws, on Pain of Imprisonment, is contrary to Magna Charta.
By-Laws are made by common Consent, for the Good of those who make them, in particular Cases where the Public Law doth no extend; and when good, all Persons within the Limits, must take Notice of them. Guilds and Fraternities, by Letters Patent of In-corporation, are empower'd to make By-Laws: And a By-Law may be good to disfranchise a Freeman, for Contempt to a Mayor, Etc.
Inhabitants of a Town, or Vill, without Custom, may make ByLaws for repairing of a Church, Highway, or any Thing for the general Good of the Public; and the greater Part shall bind the rest.
But if it be for their own private Profit, as well ordering of their Common, Etc.. they cannot make By-Laws, without a Custom. Tho if the major Part agree, that no Man thall put in his Beasts before such a Day; this shall bind all those who do not assent
The Freeholders in a Court-Leet, may make By-Laws relating to the Publick good , and they shall bind every one within the Leet.
But if they are for their own private Interest, they bind those only that agree to them, and must be by Custom. A Court-Baron, may
make By-Laws, by Custom, and add a Penalty for Breach of them.
By-Laws made by Corporations, are to be approv'd by the Lord Chancellor, and Chief Juftices, on Pain of 40l. If against the Publick Good, Etc. And so if they make Ordinances to restrain Persons from suing in the King's Courts, Etc. https://archive.org/details/bim_eighteenth-century_the-common-law-common-pl_jacob-giles_1733



Vide Felony, Larceny.

By-Laws.

BY-LAWS are certain Orders and Conſtitutions made by Corporations, for the well governing of their Members; or by Courts-Leet, and Courts-Baron, Commoners, Inhabitants of Vills, &c.

5 Rep. 63. Hob. 211. 5 Mod. 429. Corporations can't make By-Laws, without Cuſtom, or the King's Charter. But 'tis ſaid every City and Town Corporate, have Power inherent to their Conſtitution to make By-Laws for Government of the Body Politick.

2 Vent. 33. Palm. 396. A Corporation cannot make a By-Law to bind Perſons out of their Corporation. Nor may By-Laws reſtrain a Man from working in, or ſetting up his Trade; though they may be made for ordering of Trades.

5 Rep. 64. A By-Law by a Corporation may inflict a reaſonable Penalty, which may be levy'd by Diſtreſs; but cannot impriſon.

Goldsb. 79. By-Laws ought to be for the common Benefit; and muſt be agreeable to the publick Laws and Statutes, as ſubordinate to them.

2 Inſt. 54. To make By-Laws, on Pain of Impriſonment, is contrary to *Magna Charta*.

Kitch. 45. 79. By-Laws are made by common Conſent, for the Good of thoſe who make them, in particular Caſes where the Publick Law doth not

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Moor 411. be good to diſfranchiſe a Freeman, for Contempt to a Mayor, &c.

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3 Cro. 497. 532. neral Good of the Publick; and the greater Part ſhall bind the reſt: But if it be for their own private Profit, as well ordering of their

Cro. Car. 497. Dal. 103. 8 E. 3. Common, &c. they cannot make By-Laws, without a Cuſtom. Tho' if the major Part agree, that no Man ſhall put in his Beaſts before ſuch a Day; this ſhall bind all thoſe who do not aſſent.

2 Danv. Abr. 457, 458. The Freeholders in a Court-Leet, may make By-Laws relating to the Publick Good, and they ſhall bind every one within the Leet: But if they are for their own private Intereſt, they bind thoſe only that agree to them, and muſt be by Cuſtom. A Court-Baron, may make By-Laws, by Cuſtom, and add a Penalty for Breach of them.

19 H. 7. c. 7. By-Laws made by Corporations, are to be approv'd by the Lord Chancellor, and Chief Juſtices, on Pain of 40 *l.* if againſt the Publick Good, &c. And ſo if they make Ordinances to reſtrain Perſons from ſuing in the King's Courts, &c.

3

Vide Corporations, &c.

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Ordinance=BY LAWS are certain Orders and Constitutions made by corporations, for the well governing of their Members or by Courts-Leet, and Courts-Baron, Commoner, Inhabitants of Vills, &c.
Corporations can't make By-Laws, without Custom, or the king's Charter.
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A By-Law by a Corporation may inflict a reasonble Penalty, which may be levy'd by Distress, but cannot imprison. Br Laws ought to be for the common Benefit ; and must be agreeabłe to the publick Laws and Statutes, s subordinate to them. To make By-Laws, on Pain of Imprisonment, is contrary to Magna Charta.

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Rules of court cannot, of course, contravene the constitution or the law of the land. …]

https://archive.org/details/cu31924022836245/page/2975/mode/1up

Rules is used in the plural to indicate rule day: Thus "May Rules." See Steam-Gauge & Lantern Co. v. Meyrose, 27 Fed. 215.

RULES OF PRACTICE. Certain orders made by the courts for the purpose of regulating the practice of members of the bar and others.

Every court of record has an inherent power to make rules for the transaction of its business; which rules they may from time to time change, alter, rescind, or repeal. While they are in force, they must be applied to all cases which fall within them; they can use no discretion, unless such discretion is authorized by the rules themselves. Rules of court cannot, of course, contravene the constitution or the law of the land. Thompson v. Hatch, 3 Pick. (Mass.) 512; Clarke v. Magruder, 2 Harr. & J. (Md.) 79; Fullerton v. Bank, 1 Pet. (U. S.) 604, 7 L. Ed. 280; Boas v. Nagle, 3 S. & R. (Pa.) 253.

General rules are binding upon the court as well as upon the parties, except where in the original rule or body of rules there is power to exercise discretion in particular cases; Quynn v. Brooke, 22 Md. 288; Pratt v. Pratt, 157 Mass. 503, 32 N. E. 747, 21 L. R. A. 97; Magnuson v. Billings, 152 Ind. 177, 52 N. E. 803; Coyote G. & S. M. Co. v. Ruble, 9 Or. 121 (containing an elaborate discussion of the subject); so of rules of appeal; Taylor v. Leesnitzer, 31 App. D. C. 92; Royal

Idaho Terrirtory
Legislative Sessions

TERRITORY SESSIONS
1st 1863 https://archive.org/details/lawsterritoryid03idahgoog

2cnd 1866 https://archive.org/details/lawsofterritoryo00idah

3rd 1866 https://archive.org/details/lawsterritoryid02tergoog

4th. 1867 "Journals of the Council and House of Representatives of the Fourth Session of the Legislative Assembly of the Territory of Idaho"
https://books.google.com/books/about/Journals_of_the_Council_and_House_of_Rep.html?id=E3ItAAAAYAAJ
5th. December 7th, 1868-1869
https://babel.hathitrust.org/cgi/pt?id=chi.67160932&seq=13
THIRTY-NINTH CONGRESS, FIRST SESSION.
CHAPTER 140, (14 Stat. at L., 74.)
Revision of the United States statutes. as drafted by the commissioners
AN ACT to provide for the Revision and Consolidation of the Statute Laws of the United States.
Approved June 27. 1866.
https://babel.hathitrust.org/cgi/pt?id=nyp.33433111535385

6th 1871 "Laws of the territory of Idaho"
https://archive.org/details/lawsterritoryid00unkngoog
7th 1873 https://archive.org/details/lawsterritoryid02idahgoog
Sec. 2. That the streets, lanes, alleys and other rights of way, which may be in common use at the time of the enforcement of this Act, within the said City, over the land described in the aforesaid patent, are hereby declared to be public highways, for the use and benefit of the inhabitants of said City in common, and that the survey and platting of the said land into blocks and lots, acues or parts of the same, shall conform thereto.
The History of Idaho- pg 200
"…In the back part of the volume containing the laws passed at the Ninth session in 1876 and 1877, can be found nineteen acts which were passed at the Eighth session in 1874 and 1875. Some of these acts are important. Why they were not published with the Eighth Session Laws, I do not know."
https://archive.org/details/historyofidaho00hail

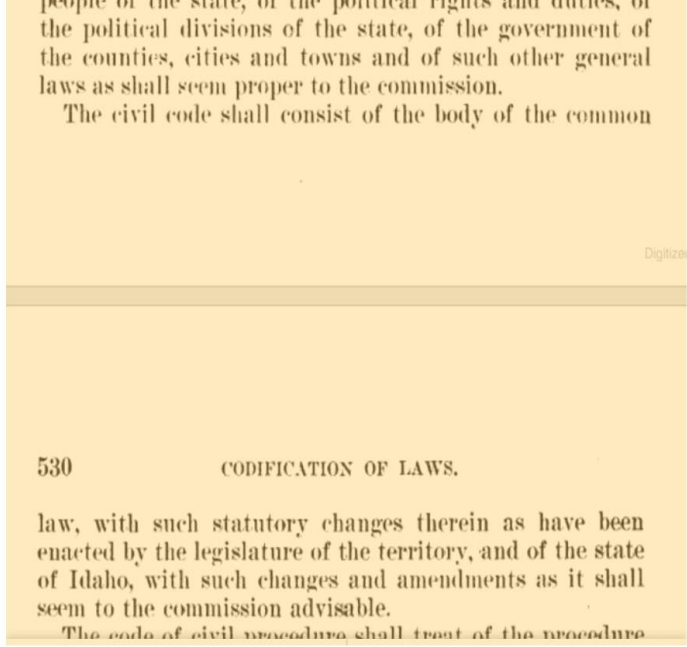
8th 1874. https://archive.org/details/revisedlawsofidaho00.
Declared all Idahoans to be "US citizens" …"persons" Even "natural persons" is misleading and fraud…persons are not born… it's fraud.
Men/women born in Idaho are natural born Americans
None of the statutes need to be authorized/reviewed by congress
9th. 1877 https://archive.org/details/lawsterritoryid04idahgoog
Pg106 [page 120 digital]
Beginning of 19 acts that should have been in the 1874-1875 session books but instead are here in the 1877
10th 1879 https://archive.org/details/lawsterritoryid05idahgoog
11th 1881 https://archive.org/details/lawsterritoryid01tergoog
(CODE OF CIVIL PROCEDURE) claims code applies to corporate: persons/natural born persons
SUPREME COURT.
Rindless et al. v. Delaware and Raritan Canal Company: 1st. That by no sound or reasonable interpretation, can a corporation- a mere faculty in law be transformed into a citizen, or treated as a citizen.
"A corporation, therefore, being not a natural person, but a mere creature of the mind, invisible and intangible, cannot be a citizen of a state, or of the United States, and cannot fall within the terms or the power of the above mentioned article, and can therefore neither plead nor be impleaded in the courts of the United States."
The history of Idaho : Hailey, John
Pg. 265
[…This session of the Legislature continued for sixty days, an act of Congress having extended the time from forty to sixty days. The Council organized on the first day, and the House on the second day. They worked faithfully and passed some good laws. Among these was a complete revision of our Code of Civil Procedure. The work of compiling this Code was due almost wholly to the Hon. R. Z. Johnson and Judge John S. Gray. Mr. Johnson was a member of the Council, and Mr. Gray a member of the House. They had done the greater portion of compiling these laws before the Legislature met [see David Dudley Field Codes adapted wholly by California] and the members had such confidence in their ability and integrity that their work of compilation was accepted and enacted into law by the Legislature with but very few amendments.]

12th
13th. 1885 https://archive.org/details/lawsterritoryid06idahgoog
14th. 1887 https://archive.org/details/revisedstatuteso00idah
15th 1889 https://archive.org/details/lawsterritoryid01idahgoog
@@@@@@@@@@@@@@@@
STATE LEGISLATIVE SESSIONS
Beginning of never ending emergencies
1st 1890-1891.
https://archive.org/details/generallawsstat00idahgoog/page/n6/mode/1up?view=theater
(See also :emergency Laws of the State of Idaho: passed at the sixteenth session of the state legislature 1921)
(See organic act 1871 they allowed immediate effect .. no waiting time for new enactments)
1st EMERGENCY
2cnd 1893
https://archive.org/details/generallawsstat05idahgoog/page/n6/mode/1up?view=theater
3rd
4th

1-4 missing
The new corporate "State" Fifth

https://archive.org/details/corplawofidaho00fifthses
1899
https://books.google.com/books/about/General_Laws_of_the_State_of_Idaho.html?id=IndLAQAAIAAJ
CODIFICATION OF LAWS
The civil code shall consist of the body of the common law, with such statutory changes therein as have been enacted by the legislature of the territory, and of the state of Idaho, with such changes and amendnents as it shall seem to the commission advisable.
~~~~<<<>>>~~~~~
Pg.529
[….Sec. 2. It shall be the duty of the commission to pre pare the following codes, the political code, the civil code, the code of civil procedure and the penal code.
The political code shall treat of the sovereignty of the people of the state, of the political rights and duties, of the political divisions of the state, of the government of the counties, cities and towns and of such other general laws as shall seem proper to the commission.
The civil code shall consist of the body of the common Law]
Pg. 530
CODIFICATION OF LAWS.
[…with such statutory changes therein as have been enacted by the legislature of the territory, and of the state of Idaho, with such changes and amendments as it shall seem to the commission advisable.
The code of civil procedure shall treat of the procedure and practice in civil actions and proceedings in all of the courts of the state, or any subdivision thereof.
The penal code shall treat of crimes and misdemeanors and the punishment thereof, of criminal procedure and penitentiaries, prisons and jails.
The commission shall also make and prepare a report designating what statutes or parts of statutes are repealed by the provision of any other act reported by them

6th
7th 1903. https://archive.org/details/generallawsstat04idahgoog
8th none-biannual?
9th 1907. https://archive.org/details/generallawsstat02idahgoog
1909-1919
https://archive.org/details/compiledstatutes00idah/page/n12/mode/1up?q=Magna+
10th none-biannual?
11th
12th. none-biannual?
13th
14th. none-biannual?
https://archive.org/details/
15th
1919
Ban on concealed arms
https://archive.org/details/speciallocallaws00idah
16th 1921.
https://archive.org/details/emlawofstidaho00secstate.
(Emergency [Quarantine] Laws of the State of Idaho: passed at the sixteenth session of the state legislature 1921)
17th 1923. MISSING none-biannual?
https://archive.org/details/genlawsidaho23idstate


the political divisions of the state, of the government of the counties, cities and towns and of such other general laws as shall seem proper to the commission.
The civil code shall consist of the body of the common

530 CODIFICATION OF LAWS.

law, with such statutory changes therein as have been enacted by the legislature of the territory, and of the state of Idaho, with such changes and amendments as it shall seem to the commission advisable.
~~~~

18th
1925
https://babel.hathitrust.org/cgi/pt?id=osu.32437122766724&seq=5
Approved February 25, 1925.
CHAPTER 89
(H. B. No. 200)
AN ACT AMENDING SECTIONS 2, 3, 4, 7, 12, 16 AND 17 OF CHAPTER 211 OF THE IDAHO SESSION LAWS OF 1923, ADDING A SECTION TO BE KNOWN AS SECTION 4a, DEFINING MEMBERS OF
THE IDAHO STATE BAR, AND DECLARING AN EMERGENCY.
Be It Enacted by the Legislature of the State of Idaho: SECTION 1. That Section 2 of Chapter 211 of the Idaho Session Laws of 1923, be and the same is hereby amended
to read as follows:
~~~~~~<<>>~~~~~~
Approved March 13, 1925. CHAPTER 194 (H. B. No. 203) AN ACT TO CREATE A STATE BOARD OF EUGENICS;; TO PROVIDE FOR THE STERILIZATION OF ALL FEEBLE-MINDED, INSANE, EPILEPTICS, HABITUAL CRIMINALS, MORAL DEGENER- ATES AND SEXUAL PERVERTS WHO ARE A MENACE TO SOCIETY, AND PROVIDING THE MEANS FOR ASCERTAIN- ING WHO ARE SUCH PERSONS. Be It Enacted by the Legislature of the State of Idaho: STATE BOARD OF EUGENICS; SECTION 1. How CONSTITUTED; SECRETARY. There is hereby established and constituted for the State of Idaho a "State Board of Eugenics;", which shall be composed of the State Public Health Adviser, the Superintendent of Northern Idaho Sanitarium, the Superintendent of the Idaho State Sanitarium, at Nampa, the Superintendent of the Idaho Insane Asylum, the Superintendent of the Idaho Industrial Training School and the warden of the Penitentiary, whose duties shall be as hereinafter defined....]
SEC. 3. EXAMINATION OF PERSONS REPORTED; STERILIZATION. It shall be the duty of the State Board of Eugenics;
to examine into the innate traits, the mental and physical conditions, the PERSONAL RECORDS and the FAMILY TRAITS AND HISTORY OF ALL of the persons so reported, so far as the same can be ascertained, and for this purpose said Board shall have the power to subpoena witnesses, which subpoena shall be issued by said Board and served in like manner and with like effect as subpoenas in criminal cases in the District Court, and any member of said Board may administer an oath to any witness whom it is desired to examine in such proceeding; and if in the judgment of a majority of said Board procreation by such person would produce a child or children having an inherited tendency to feeble-mindedness, insanity, epilepsy, criminality or degeneracy, or who would probably become a social menace or ward of the State, and there is no probability that the condition of such person so investigated and examined will improve to such an extent as to avoid such consequences, then it shall be the duty of such Board to make an order embodying its conclusions with reference to such person in said respects and specifying such a type of sterilization as may be deemed by said Board best suited to the condition of said person and most likely to produce the beneficial results in the respects specified in this section....
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19th
1927
https://babel.hathitrust.org/cgi/pt?id=osu.32437122766476&seq=5
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CHAPTER LXVII.
LIST OF THE NAMES OF MEMBERS OF THE CONSTITUTIONAL CONVEN-
TION NAMES OF FIRST STATE OFFICERS.
This constitutional convention convened (in response to a pro-
clamation issued by Governor E. A. Stevenson) at Boise on July
4, 1889, and adjourned August 6, 1889. The names of the mem-
bers were as follows: John S. Gray Ada County A. B. Moss Ada County Edgar Wilson Ada County John Lemp Ada Coimty
W. C. Maxey Ada County Chas. A. Clark Ada County I. N. Costin Ada County P. J. Pefley Ada County Frank Steunenberg Ada County
Jas. H. Beatty Alturas County A. J. Pinkham Alturas County O. R. Batten Alturas County L. Vineyard Alturas County
P. McMahon Alturas Coimty J. W. Ballentine Alturas County J. L. Underwood Bear Lake County W. H. Savidge Bingham County
F. W. Beane Bingham County H. B. Kinport Bingham County J. T. Morgan Bingham County H. O. Harkness Bingham County
Ralph Anderson Bingham County Sam F. Taylor Bingham County Fred Campbell Boise County George Ainslie Boise County
John H. Meyer Boise Coimty H. S. Hampton Cassia County J. W. Lamereaux Cassia County O. J. Salisbury Custer County
A. J. Pierce Custer County A. J. Crook Custer County Jas. M. Shoup Custer County
FIRST STATE OFFICERS SSS F. P. Cavanah Elmore County A. M. Siimott Elmore County Homer Stull Elmore County
Henry Melder Kootenai County Albert Hagan Kootenai County W- A. Hendryx Kootenai County Willis Sweet Latah County
W. J. McConnell Latah County J. W. Brigham Latah Coimty W. D. Robbins Latah County H. B. Blake Latah County
A. S. Chaney Latah Coimty N. I. Andrews Lemhi County Thos. Payeatt Lemhi County John Hagan Lemhi County
J. M. Howe Lemhi County Jas. W. Reid Nez Perce County J. W. Poe Nez Perce County J. S. Whitton Logan County
Henry Armstrong Logan Coimty W. C. B. Allen Logan County S. J. Pritchard Owyhee County C. M. Hays Owyhee County
J. I. Crutcher Owyhee County W. B. Heyburn Shoshone County W. H. Clagett Shoshone County Wm. H. Hammel Shoshone County
S. S. Glidden Shoshone County W. W. Woods Shoshone County A. B. Bevan Shoshone County A. E. Mayhew Shoshone County
G. W. King Shoshone County Sol Hasbrouck Washington County E. S. Jewell Washington County Frank Harris Washington County
A. F. Parker Idaho County
Chairman of Convention, W. H. Clagett.
~~~~~~~~~~~~~~~~~~~~
https://www.uidaho.edu/-/media/UIdaho-Responsive/Files/law/library/legal-research/guides/idaho-legislative-history.pdf
https://en.wikipedia.org/wiki/Idaho_Territory
https://babel.hathitrust.org/cgi/ls?q1=Laws+of+the+Territory+of+Idaho&field1=ocr&a=srchls&ft=ft&lmt=ft
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Laws of Nature, Parents Rights vs Nanny State, CPS

14Geo. 3 ----1774

The power of the assigning the custody of a child brought before the court if the the family disagrees about the Custody ,and the child be not of years of determining for itself is discretionary; if the father appears on circumstances improper to be permitted to take the child.

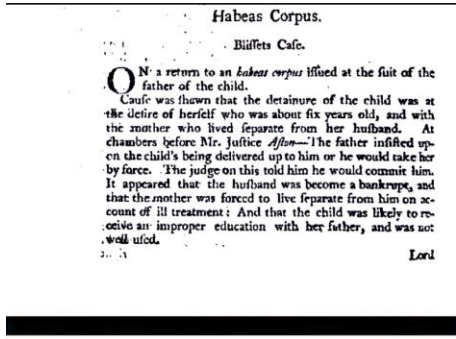
On a return to an habeas carpus issued at the suit of the father of the child. Cause was shewn that the detainure of the child was at the desire of herself who was about six years old, and with the mother who lived separate from her husband. At chambers before Mr. Justice Afton — The father insisted upon the child's being delivered up to him or he would take her by force. The judge on this told him he would commit him. It appeared that the husband was become a bankrupt, and that the mother was forced to live separate from him on account of ill treatment: And that the child was likely to receive an improper education with her father , and was not well used. Lord Mansfield—The court, if the parties are agreed, will make no determination. If the parties are disagreed, the court will do what shall appear best for the child; fix on a boarding school and the court will have no objection; Let the child in the mean time stay, so that the rule may be made with the concurrence of the family. The natural right is with the father; but if the father is a bakrupt, if he contributed nothing for the child or family, and if he be improper, for such conduct as was sugested at the Judge's chambers, the court will not think it right that the child should be with him.

It appeared to be held in a late remarkable cause of Gifard and Gifard before the Lord Chancellor , that the paternal authority as to its civil force was founded in nature, and the care presumed which he would take for the education of the child; but if he would not provide for its support, he abandoned his right to the custody of the child’s person: or if he would educate it in a manner forbidden by the laws of the state the public right of the community to superintend the education of is members, and disallow what for its own security and welfare it should see good to disallow, went beyond the right and authority of the father.* And this perhaps, is the meaning of that passage in the famous epistle of Brutus to Cicero, “Sid deminum ni parents quidem majores notri aslucrunt offi."

That the power of a father over a child, however despotic the law allowed it to be in other respects as to the child itself, was yet subordinate to the power and constitution of the state, so as not to justify anything contra rempublicam. Upon this...]

[THIS Judge made law has been going on for a long time..Notice the vague statement that the Father was bankrupt and the child was "not well used" , and "contributed nothing for the child or family" AFTER his daughter was taken from him. Where is the opinion of the Jury? This is the CIVIL LAW in England by 1774. They even acknowledged the Natural Law Right of the father] How is it a 6 year old gets to decide? Where does it say that she was not being sheltered/clothed/fed?

If he had actually abused his daughter...Where are the charges ??? If they don't like your education..they will ship them off to an indoctrunation camp.



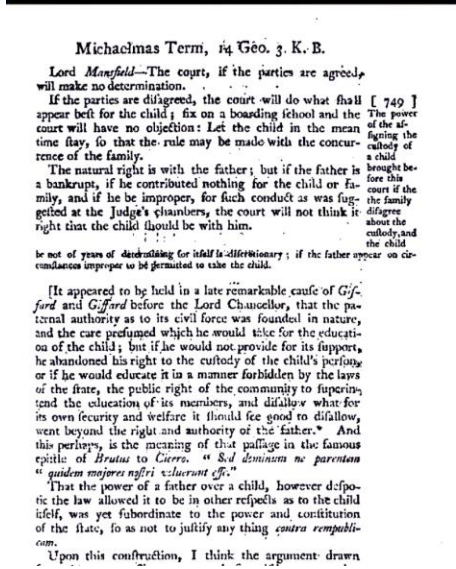
Habeas Corpus.

Bissets Case.

ON a return to an *habeas corpus* issued at the suit of the father of the child.

Cause was shewn that the detainure of the child was at the desire of herself who was about six years old, and with the mother who lived separate from her husband. At chambers before Mr. Justice *Afton*—The father insisted upon the child's being delivered up to him or he would take her by force. The judge on this told him he would commit him. It appeared that the husband was become a bankrupt, and that the mother was forced to live separate from him on account of ill treatment: And that the child was likely to receive an improper education with her father, and was not well used.

Lord



Michaelmas Term, 14 Geo. 3. K. B.

Lord *Mansfield*—The court, if the parties are agreed, will make no determination.

If the parties are disagreed, the court will do what shall appear best for the child; fix on a boarding school and the court will have no objection: Let the child in the mean time stay, so that the rule may be made with the concurrence of the family.

[749]

The power of the affigning the cuftody of a child brought before this court if the the family difagree about the cuftody, and the child be not of years of determining for itself is difcretionary; if the father appear on circumftances improper to be permitted to take the child.

The natural right is with the father; but if the father is a bankrupt, if he contributed nothing for the child or family, and if he be improper, for such conduct as was fuggefted at the Judge's chambers, the court will not think it right that the child fhould be with him.

[It appeared to be held in a late remarkable cauſe of *Gifford* and *Giffard* before the Lord Chancellor, that the paternal authority as to its civil force was founded in nature, and the care preſumed which he would take for the education of the child; but if he would not provide for its ſupport, he abandoned his right to the cuſtody of the child's perſon, or if he would educate it in a manner forbidden by the laws of the ſtate, the public right of the community to ſuperintend the education of its members, and diſallow what for its own ſecurity and welfare it ſhould ſee good to diſallow, went beyond the right and authority of the father.* And this perhaps, is the meaning of that paſſage in the famous epiſtle of *Brutus* to *Cicero*. "*Sid deminum ne parentum quidem majores noſtri aſlucrunt offi.*"

That the power of a father over a child, however deſpotic the law allowed it to be in other reſpects as to the child itſelf, was yet ſubordinate to the power and conſtitution of the ſtate, ſo as not to juſtify any thing *contra rempublicam*.

Upon this conſtruction, I think the argument drawn

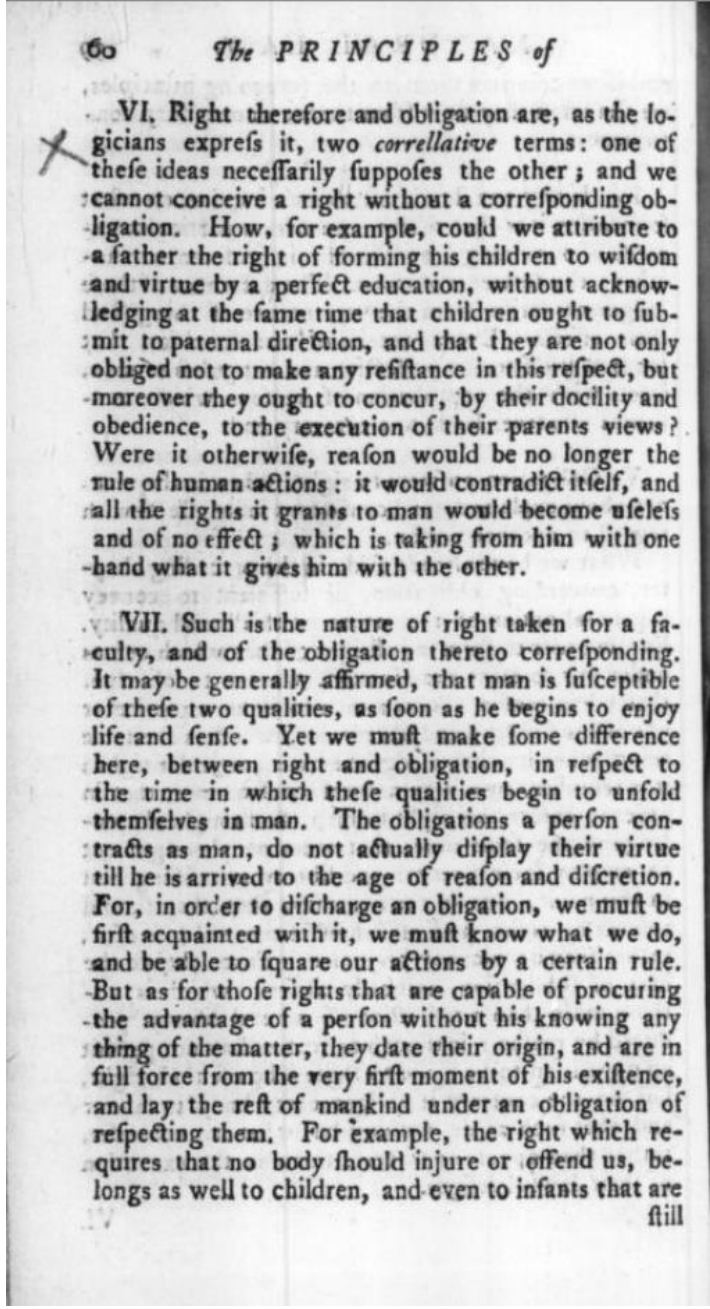
https://archive.org/details/reportscasesadjuopleagoog/page/n810/mode/1up?view=theater

VI.

[.Right therefore and obligation are, as the logicians express it, two correllative terms: one of these ideas necessarily supposes the other; and we cannot conceive a right without a corresponding obligation. How, for example, could we attribute to a father the right of forming his children to wisdom and virtue by a perfect education, without acknowledging at the same time that children ought to fub-imit to paternal direction, and that they are not onl obliged not to make any refiftance in this respect , but moreover they ought to concur, by their docility and obedience, to the execution of their parents views?

Were it otherwise, reason would be no longer the rule of human actions: it would contradict itself, and all the rights it grants to man would become useless and of no effect; which is taking from him with one

-hand what it gives him with the other.



60 The PRINCIPLES of

VI. Right therefore and obligation are, as the logicians expreſs it, two *correllative* terms: one of theſe ideas neceſſarily ſuppoſes the other; and we cannot conceive a right without a correſponding obligation. How, for example, could we attribute to a father the right of forming his children to wiſdom and virtue by a perfect education, without acknowledging at the ſame time that children ought to ſubmit to paternal direction, and that they are not only obliged not to make any reſiſtance in this reſpect, but moreover they ought to concur, by their docility and obedience, to the execution of their parents views? Were it otherwiſe, reaſon would be no longer the rule of human actions: it would contradict itſelf, and all the rights it grants to man would become uſeleſs and of no effect; which is taking from him with one hand what it gives him with the other.

VII. Such is the nature of right taken for a faculty, and of the obligation thereto correſponding. It may be generally affirmed, that man is ſuſceptible of theſe two qualities, as ſoon as he begins to enjoy life and ſenſe. Yet we muſt make ſome difference here, between right and obligation, in reſpect to the time in which theſe qualities begin to unfold themſelves in man. The obligations a perſon contracts as man, do not actually diſplay their virtue till he is arrived to the age of reaſon and diſcretion. For, in order to diſcharge an obligation, we muſt be firſt acquainted with it, we muſt know what we do, and be able to ſquare our actions by a certain rule. But as for thoſe rights that are capable of procuring the advantage of a perſon without his knowing any thing of the matter, they date their origin, and are in full force from the very firſt moment of his exiſtence, and lay the reſt of mankind under an obligation of reſpecting them. For example, the right which requires that no body ſhould injure or offend us, belongs as well to children, and even to infants that are ſtill

https://archive.org/details/bim_eighteenth-century_the-principles-of-natura_burlamaqui-j-j-jean-_1776

Roman Civil Law

“What don’t you want?”

Either you don’t want the Civil Law…. or you don’t want the English common law!!

("What don't you want?" From the movie Hell or Highwater, 2016)

You cannot redefine and/or mix the Common Law of England with The Roman Civil Law…

In the state of Louisiana, the principles of the common law are not recognized ; neither do the principles of the civil law of Rome furnish the basis of their jurisprudence. They have a system peculiar to themselves, adopted by their statutes, which embodies much of the civil law, some of the principles of the common law, and, in a few instances, the statutory provisions of other states. This system may be called the civil law of Louisiana, and is peculiar to that state.

The modes of proceeding in their courts are more nearly assimilated to the forms of chancery than to those of the common law. The plaintiff files his petition, in which he sets forth the ground of complaint and the relief prayed for. Process issues against the defendant; and when he is in court, he is ruled to answer the bill. The answer is filed, in which he admits, denies, or avoids the facts set forth in the petition,

2. Because the whole question was a question of law, and the decision was against law.

3. It is not strictly a common law proceeding ; but a proceeding under the peculiar system of Louisiana ; and according to that system, the court has power to reverse the judgment, under circumstances which would not give it that power where the trial had been according to the common law.

As this cause involves a constitutional question, which has not been settled by this court, and as I am so unfortunate as to differ in opinion with a majority of the members of the court, I shall, with great deference, present my views of the case.

In the state of Louisiana, the principles of the common law are not recognized ; neither do the principles of the civil law of Rome furnish the basis of their jurisprudence. They have a system peculiar to themselves, adopted by their statutes, which embodies much of the civil law, some of the principles of the common law, and, in a few instances, the statutory provisions of other states. This system may be called the civil law of Louisiana, and is peculiar to that state.

The modes of proceeding in their courts are more nearly assimilated to the forms of chancery than to those of the common law. The plaintiff files his petition, in which he sets forth the ground of complaint and the relief prayed for. Process issues against the defendant ; and when he is in court, he is ruled to answer the bill. The answer is filed, in which he admits, denies, or avoids the facts set forth in the petition,

https://tile.loc.gov/storage-services/service/ll/usrep/usrep028/usrep028433/usrep028433.pdf

Redefining “Common Law”…”Common Law of Maryland “ ??
Bunch of B.S.

find reference

I did not fully understand, though I carefully attended to, the point of the argument of the learned Manager [Mr. Boutwell], who, with great precision and detail, brought into view the common law of Maryland as adopted by Congress for the Government in the domestic and ordi nary affairs of life of the people in this District; but if I did rightly understand it, it was that, though there was nothing in the penal code of the District, and although the act of 1801 did not attempt to make a penal code for the District, yet somehow or other it became a misdemeanor for the President of the United States, in his official functions, to do what he did do about this office, because it was against the common law of Maryland as applied in this District.

WATCHING THE ROMAN EMPIRE COLLAPSE AGAIN
BUT WITH WIFI AND MEMES THIS TIME

LEGS OF IRON
KINGDOM OF
ANCIENT ROME
FEET OF IRON
& CLAY
KINGDOM OF
RESTORED ROME
CRUSHING ROCK
KINGDOM OF GOD

Sydney Algernon

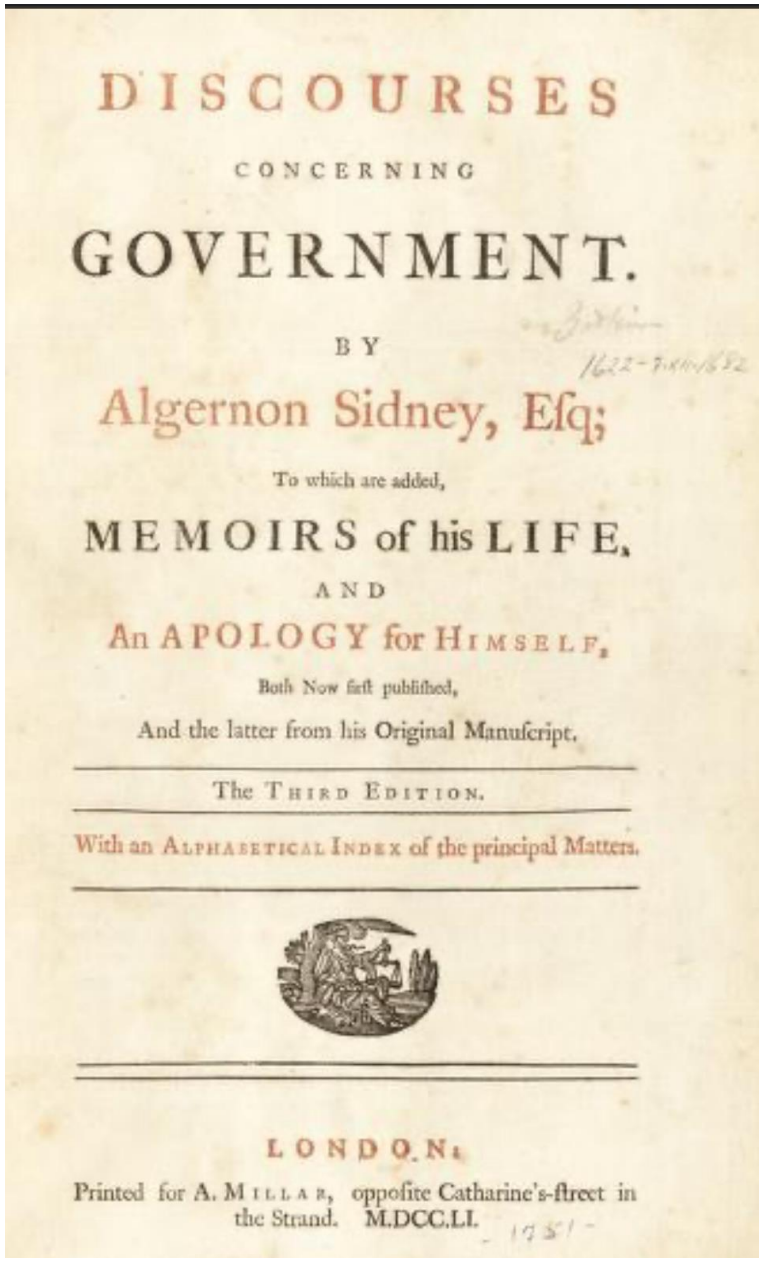
Algernon Sydney
1772
Including :Discourses Concerning Government
1698
In opposition to Sir Robert Filmer's Patriarcha
Pg.81
[...and whatever is done by delegated powers, must be referred to their principals; for none can give to any a power which they have not in themselves.
He is graciously pleased to confess, that " when men are assembled by
a human power, the power that doth assemble them, may also limit the manner of the execution of that power, But in assemblies that take their authority from the law of nature, it is not so; for what
Pg.82
liberty or freedom is due to any man by the law of nature, no inferior
power can alter, limit, or diminish: no one man, or multitude of men, can give away the natural right of another."
These are strong lines, and such as, if there be any sense in them, utterly overthrow all our author's [Filmer's] doctrine, For if any assembly of men did ever take their authority from the LAW OF NATURE, it must be of such as, remaining in the entire fruition of their natural liberty, and restrained by no contract, meet together to deliberate of such matters as concern themselves; and if obliged to enter into the society that the rest may constitute, he cannot enjoy the benefit of that society unless he enter into it:
he may be gone, and set up for himself, or set up another with such as will agree with him.
But if he enter into the society, he is obliged by the laws of it; and if
one of those laws be, that all things (should be determined by the plurality of voices, his assent is afterwards comprehended in all the resolutions of that plurality. ..]
[...This is as much as is required to establish the natural liberty of man-
kind in its utmost extent, and cannot be shaken by our author's surmise...].

a gap is thereby opened for every seditious multitude to raise a new commonwealth."
For till the commonwealth be established , no multitude can be seditious, because they are not subject to any human law; and sedition implies an unjust and disorderly opposition of that
power which is legally established; which cannot be when there is none,
NOR by him who IS NOT a MEMBER of the society that makes it; and when it is made, such as entered into it, are obliged by the laws of it.
This hewing the **ROOT AND FOUNDATION** of civil powers, we may judge of the use and extent of them, according to the letter of the law, or the true intentional meaning of it; both which declare them to be purely human ordinances, proceeding from the will of those who seek their own good; and may certainly infer, that, since all multitudes are composed of **SUCH AS ARE UNDER** under some CONTRACT, OR FREE FROM ALL [free-inhabitants], no man is obliged to enter into those contracts against his own will, nor obliged by ANY towhich
he DOES NOT ASSENT.
Those multitudes, that enter into such contacts, and thereupon form civil societies, act according to their own will: those that are engaged in NONE, take their authority from the LAW OF NATURE; their RIGHTS cannot be LIMITED or DIMINISHED by any one man, or number of men; and consequently whoever does it, or attempts the doing of it, violates the most sacred laws of God and nature.]

[...For if the liberty of one man cannot be limited or diminished by
one, or any number of men, and none can give away the RIGHT of
another, it is plain, that the ambition of one man, or of many, a faction
of citizens [notice the distinction between man & citizens] , or the mutiny of an army, cannot give a right to any over the liberties of a whole nation. Those, who are so set up, have their root in violence or fraud, and are rather to be accounted robbers and pirates, than magistrates.
https://archive.org/details/worksofalgernons01sidn

The authority of the Roman consuls, dictators, praetors, and tribunes, was the same as soon as it was established : was as legal and just as that of the kings of Denmark, which is said to have continued above three thousand years. For as time can make nothing lawful or just, that is not so of itself
(tho' men are unwilling to change that which has pleased their ancestors, unless they discover great inconveniences in it)
that which a people does **rightly** establish **for their own good**, is of as much force the first day, as continuance can ever give to it : and therefore **in matters of the greatest importance**, **wise and good men do not so much inquire what has been, as what is good, and ought to be ,for that which of itself is evil**, **by continuance is made worse**, and, **upon the first opportunity, is justly to be abolished**.

But if that liberty in which God created man, can receive any strength from continuance, and the rights of Englishmen can be rendered more unquestionable by prescription, I say, **that the nations, whose rights we inherit, have ever enjoyed the liberties we claim**, and always exercised them in governing themselves popularly, or **by** such **representatives as have been instituted by themselves**, from the time they were first known in the world.
Algernon Sidney
https://archive.org/details/discoursesongov01sidngoog


DISCOURSES
CONCERNING
GOVERNMENT.
BY
Algernon Sidney, Esq;
To which are added,
MEMOIRS of his LIFE,
AND
An APOLOGY for HIMSELF,
Both Now first published,
And the latter from his Original Manuscript.
The THIRD EDITION.
With an ALPHABETICAL INDEX of the principal Matters.
LONDON:
Printed for A. MILLAR, opposite Catharine's-street in the Strand. M.DCC.LI.

Algernon Sydney
Discourses Concerning Government
1698
Pg. 83

[…since all multitudes are composed of **SUCH AS ARE UNDER** some **CONTRACT**, **OR FREE FROM ALL** [free-inhabitants], no man is obliged to enter into those contracts against his own will, nor obliged by ANY to which he DOES NOT ASSENT.
Those multitudes, that enter into such contracts, and thereupon form civil[ized] societies, act according to their own will: **those** that are engaged in NONE, take their authority from the **LAW OF NATURE**; their
RIGHTS cannot be LIMITED or DIMINISHED by any one man, or number of men; and consequently whoever does it, or attempts the doing of it, violates the most sacred laws of God and nature.]
[…For if the liberty of one man cannot be limited or diminished by one, or any number of men, and none can give away the RIGHT of another, it is plain, that the ambition of one man, or of many, a faction of citizens [notice the distinction between **Man** & **citizens**] , or the mutiny of an army, cannot give a right to any over the liberties of a whole nation. Those, who are so set up, have their root in violence or fraud, and are rather to be accounted robbers and pirates, than magistrates.]

Who will wear a shoe that hurts him, because the shoe-maker tells him it is well made? Or who will live in a house that yields no defense against the extremities of weather, because the mason or carpenter assures him it is a very good house?
Such as have reason, understanding or common sense, will, and ought to make use of it in those things that concern themselves and their posterity, and suspect the words of such as are interested in deceiving or persuading them not to see with their, own eyes, that they may be more easily deceived.
This rule obliges us so far **to search into matters of state**, as **to examine the original principles of government** in general, and **of our own in particular**.
We cannot distinguish truth from falsehood, right from wrong, or know what obedience we owe to the magistrate, or what we may justly expect from him, unless we know what he is, why he is, and by whom he is made to be what he is.!
Discourses on government, 1698
Algernon Sidney
https://archive.org/details/discoursesongov01sidngoog

(Sydney's *Discourses* continued)

from whereas the force and essence of all laws would be subverted, if under colour of mitigating and interpreting, the power of altering were allow'd to kings [or magistrates] who often want the inclination, and for the most part the capacity of doing it rightly. 'Tis not therefore upon the uncertain will or
understanding of a prince, that the safety of a nation ought to depend. He is sometimes a child, and sometimes overburden'd with years. Some are weak, negligent, slothful, foolish or vicious: others, who may have something of rectitude in their intentions, and naturally are not incapable of doing well, are drawn out of the right way by the subtlety of ill men who gain credit with them. That rule must always be uncertain, and subject to be distorted, which depends upon the fancy of such a man. He always fluctuates, and every passion that arises in his mind, or is infused by others, disorders him. The good of a people ought to be established upon a more solid foundation. For this reason the law is established, which no passion can disturb. 'Tis void of desire and fear, lust and anger. 'Tis mens sine affectu, written reason, retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but without any regard to persons commands that which is good, and punishes evil in all, whether rich or poor, high or low. 'Tis deaf, inexorable, inflexible.

(continued)

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(Sydney's Discourses continued)

By this means every man knows when he is safe or in danger, because he knows whether he has done good or evil. But if all depended upon the will of a man, the worst would be often the most safe, and the best in the greatest hazard: Slaves would be often advanced, the good and the brave scorn'd and neglected. The most generous
nations have above all things sought to avoid this evil: and the virtue, wisdom and generosity of each may be discern'd by the right fixing of the rule that must be the guide of every man's life, and so constituting their magistracy that it may be duly observed.

Such as have attained to this perfection, have always flourished in virtue and happiness: They are, as Aristotle says, governed by God, rather than by men,
whilst those who subjected themselves to the will of a man were governed by a beast...][For if the king who governs not according to law, degenerates into a tyrant, he is obliged to frame his actions according to law, or not to be a king; for a tyrant is none.

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Discourses Concerning Government
Algernon Sydney Citing Fortesque

The King [or Executive Branch] is bound by the Law of the Land
[... Fortescue says plainly,
the king cannot change any law: Magna Charta casts all upon the laws of the land and customs of England,
but to say that the king can by his will make that to be a custom, or an ancient law, which is not, or that not to be so which is, is most absurd.
He must therefore take the laws and customs as he finds them, and can neither detract from, nor add anything to them. The ways are prescribed as well as the end. Judgments are given by equals, per pares. The judges who may be assisting to those, are sworn to proceed according to law [NOT BY-LAW], and not to regard the king's letters or commands. The doubtful cases are reserved, and to be referred to the parliament, as in the statute of 35 Edw. 3d concerning treasons, but never to the king. The law intending that these parliaments should be annual, and leaving to the king a power of calling them more often, if occasion require, takes away all pretence of a necessity that there should be
any other power to interpret or mitigate laws. For 'tis not to be imagined that there should be such a pestilent evil in any ancient law, custom, or later act of parliament, which being on the sudden discover'd, may not without any great prejudice continue for fourty days [quarantine], till a parliament may be called...]
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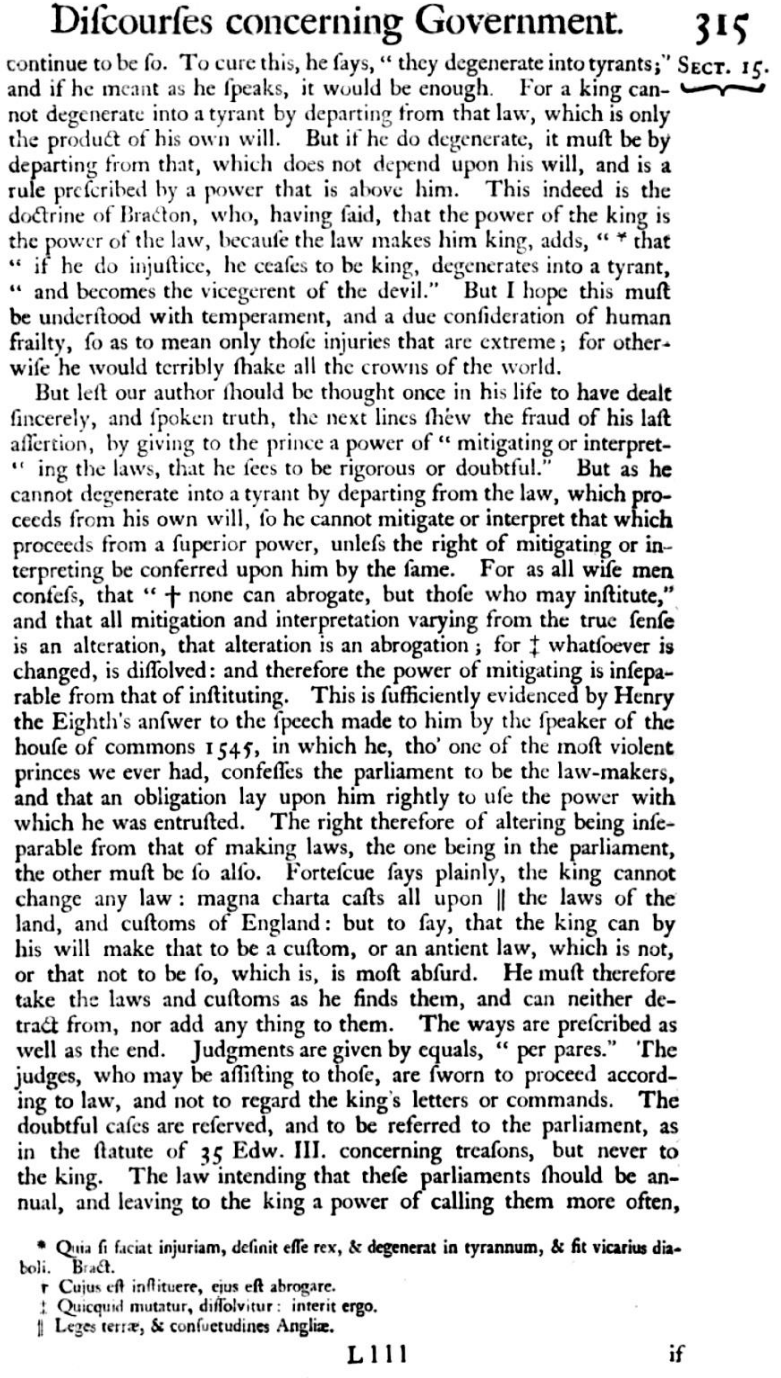


Diſcourſes concerning Government. 315

continue to be ſo. To cure this, he ſays, " they degenerate into tyrants;" and if he meant as he ſpeaks, it would be enough. For a king cannot degenerate into a tyrant by departing from that law, which is only the product of his own will. But if he do degenerate, it muſt be by departing from that, which does not depend upon his will, and is a rule preſcribed by a power that is above him. This indeed is the doctrine of Bracton, who, having ſaid, that the power of the king is the power of the law, becauſe the law makes him king, adds, " * that " if he do injuſtice, he ceaſes to be king, degenerates into a tyrant, " and becomes the vicegerent of the devil." But I hope this muſt be underſtood with temperament, and a due conſideration of human frailty, ſo as to mean only thoſe injuries that are extreme; for otherwiſe he would terribly ſhake all the crowns of the world. SECT. 15.

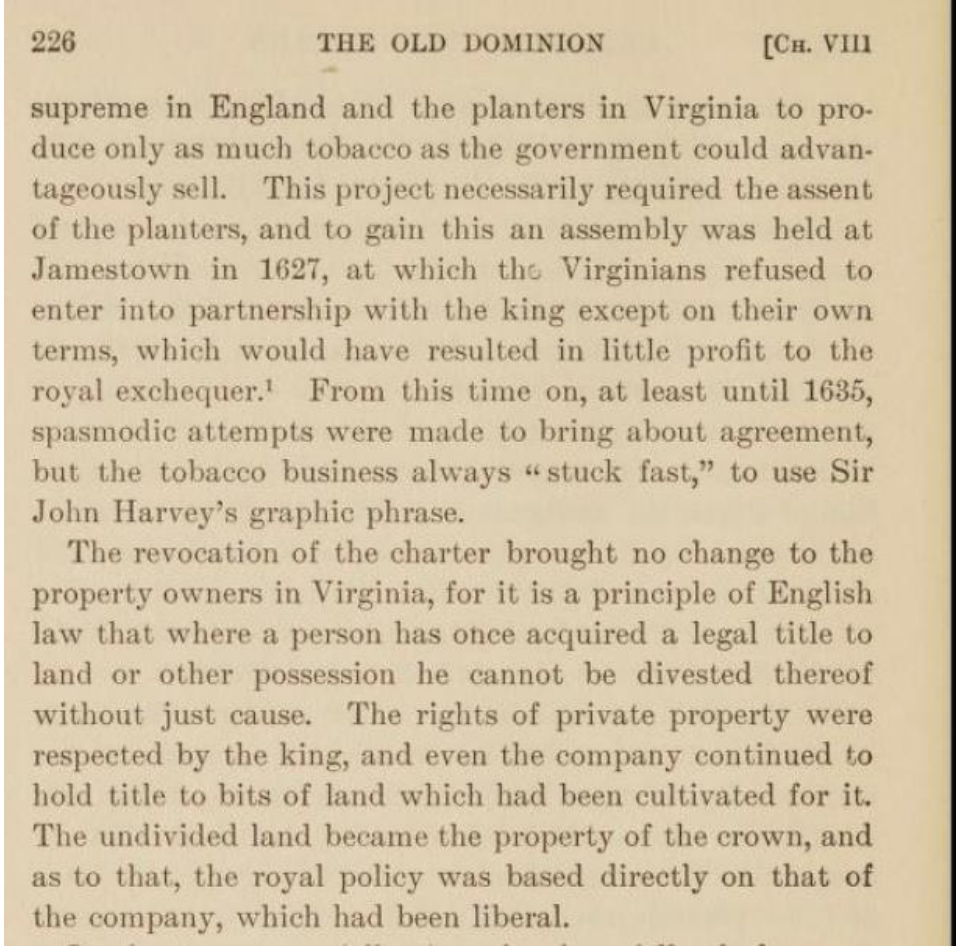
But leſt our author ſhould be thought once in his life to have dealt ſincerely, and ſpoken truth, the next lines ſhew the fraud of his laſt aſſertion, by giving to the prince a power of " mitigating or interpret- " ing the laws, that he ſees to be rigorous or doubtful." But as he cannot degenerate into a tyrant by departing from the law, which proceeds from his own will, ſo he cannot mitigate or interpret that which proceeds from a ſuperior power, unleſs the right of mitigating or interpreting be conferred upon him by the ſame. For as all wiſe men confeſs, that " † none can abrogate, but thoſe who may inſtitute," and that all mitigation and interpretation varying from the true ſenſe is an alteration, that alteration is an abrogation; for ‡ whatſoever is changed, is diſſolved: and therefore the power of mitigating is inſeparable from that of inſtituting. This is ſufficiently evidenced by Henry the Eighth's anſwer to the ſpeech made to him by the ſpeaker of the houſe of commons 1545, in which he, tho' one of the moſt violent princes we ever had, confeſſes the parliament to be the law-makers, and that an obligation lay upon him rightly to uſe the power with which he was entruſted. The right therefore of altering being inſeparable from that of making laws, the one being in the parliament, the other muſt be ſo alſo. Forteſcue ſays plainly, the king cannot change any law: magna charta caſts all upon ‖ the laws of the land, and cuſtoms of England: but to ſay, that the king can by his will make that to be a cuſtom, or an antient law, which is not, or that not to be ſo, which is, is moſt abſurd. He muſt therefore take the laws and cuſtoms as he finds them, and can neither detract from, nor add any thing to them. The ways are preſcribed as well as the end. Judgments are given by equals, " per pares." The judges, who may be aſſiſting to thoſe, are ſworn to proceed according to law, and not to regard the king's letters or commands. The doubtful caſes are reſerved, and to be referred to the parliament, as in the ſtatute of 35 Edw. III. concerning treaſons, but never to the king. The law intending that theſe parliaments ſhould be annual, and leaving to the king a power of calling them more often,

* Quia ſi faciat injuriam, definit eſſe rex, & degenerat in tyrannum, & fit vicarius diaboli. Bract.
† Cujus eſt inſtituere, ejus eſt abrogare.
‡ Quicquid mutatur, diſſolvitur: interit ergo.
‖ Leges terræ, & conſuetudines Angliæ.

L 111 if

Pg.226

"The revocation of the charter brought no change to the property owners in Virginia, for it is a principle of English law that where a person has once acquired a legal title to land or other possession he cannot be divested thereof without just cause. The rights of private property were respected by the king, and even the company continued to hold title to bits of land which had been cultivated for it. The undivided land became the property of the crown, and as to that, the royal policy was based directly on that of the company, which had been liberal."



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supreme in England and the planters in Virginia to produce only as much tobacco as the government could advantageously sell. This project necessarily required the assent of the planters, and to gain this an assembly was held at Jamestown in 1627, at which the Virginians refused to enter into partnership with the king except on their own terms, which would have resulted in little profit to the royal exchequer.[1] From this time on, at least until 1635, spasmodic attempts were made to bring about agreement, but the tobacco business always "stuck fast," to use Sir John Harvey's graphic phrase.

The revocation of the charter brought no change to the property owners in Virginia, for it is a principle of English law that where a person has once acquired a legal title to land or other possession he cannot be divested thereof without just cause. The rights of private property were respected by the king, and even the company continued to hold title to bits of land which had been cultivated for it. The undivided land became the property of the crown, and as to that, the royal policy was based directly on that of the company, which had been liberal.

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LEGAL AND POLITICAL HERMENEUTICS, OR PRINCIPLES OF INTERPRETATION AND CONSTRUCTION IN LAW AND POLITICS,

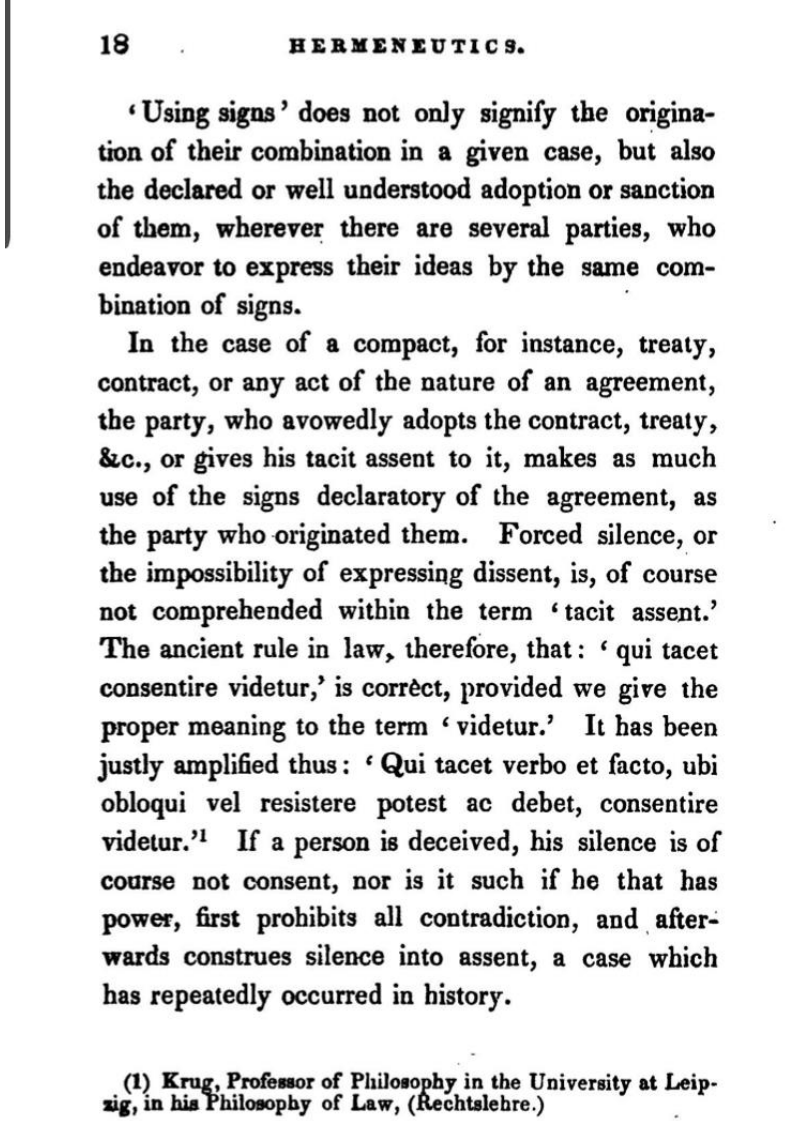
Pg. 18

In the case of a compact, for instance, treaty, contract, or any act of the nature of an agreement, the party, who avowedly adopts the contract, treaty, &c., or gives his tacit assent to it, makes as much use of the signs declaratory of the agreement, as the party who originated them.

Forced silence, or the impossibility of expressing dissent, is, of course not comprehended within the term * tacit assent.' The ancient rule [Maxim] in law, therefore, that : *qui tacet consentire videtur,* is correct, provided we give the proper meaning to the term * videtur.'

It has been justly amplified thus : * Qui tacet verbo et facto, ubi obloqui vel resistere potest ac debet, consentire videtur.

If a person is DECEIVED, his silence is of coarse NOT consent, nor is it such if he that has power, first prohibits all contradiction, and afterwards construes silence into assent, a case which has repeatedly occurred in history.



18 HERMENEUTICS.

'Using signs' does not only signify the origination of their combination in a given case, but also the declared or well understood adoption or sanction of them, wherever there are several parties, who endeavor to express their ideas by the same combination of signs.

In the case of a compact, for instance, treaty, contract, or any act of the nature of an agreement, the party, who avowedly adopts the contract, treaty, &c., or gives his tacit assent to it, makes as much use of the signs declaratory of the agreement, as the party who originated them. Forced silence, or the impossibility of expressing dissent, is, of course not comprehended within the term 'tacit assent.' The ancient rule in law, therefore, that: 'qui tacet consentire videtur,' is correct, provided we give the proper meaning to the term 'videtur.' It has been justly amplified thus: 'Qui tacet verbo et facto, ubi obloqui vel resistere potest ac debet, consentire videtur.'[1] If a person is deceived, his silence is of course not consent, nor is it such if he that has power, first prohibits all contradiction, and afterwards construes silence into assent, a case which has repeatedly occurred in history.

(1) Krug, Professor of Philosophy in the University at Leipzig, in his Philosophy of Law, (Rechtslehre.)

https://archive.org/details/legalpoliticalhe01lieb

[Sydney Citing Fortesque]
Online Library of Liberty: Discourses Concerning Government
http://files.libertyfund.org/files/223/Sidney_0019_EBk_v6.0.pdf
Fortescue says plainly, the king cannot change any law: Magna Charta casts all upon the laws of the land and customs of England: but to say that the king can by his will make that to be a custom, or an ancient law, which is not, or that not to be so which is, is most absurd. He must
therefore take the laws and customs as he finds them, and can neither detract from, nor add anything to them. The ways are prescribed as well as the end. Judgments are given by equals, per pares. The judges who may be assisting to those, are sworn to proceed according to law, and not to regard the king's letters or commands. The doubtful cases are reserved, and to be referred to the parliament, as in the statute of 35 Edw. 3d concerning treasons, but never to the king.6 The law intending that these parliaments should be annual, and leaving to the king a power of calling them more often, if occasion require, takes away all pretence of a necessity that there should be any other power to interpret or mitigate laws. For 'tis not to be imagined that there should be such a pestilent evil in any ancient law, custom, or later act of parliament, which being on the sudden discover'd, may not without any great prejudice continue for forty days, till a parliament may be called; whereas the force and essence of all laws would be subverted, if under colour of mitigating and interpreting, the power of altering were allow'd to kings, who often want the inclination, and for the most part the capacity of doing it rightly. 'Tis not therefore upon the uncertain will or understanding of a prince, that the safety of a nation ought to depend. He is sometimes a child, and sometimes overburden'd with years. Some are weak, negligent, slothful, foolish or vicious: others, who may have something of rectitude in their intentions, and naturally are not incapable of doing well, are drawn out of the right way by the subtlety of ill men who gain credit with them. That rule must always be uncertain, and subject to be distorted, which depends upon the fancy of such a man. He always fluctuates, and every passion that arises in his mind, or is infused by others, disorders him. The good of a people ought to be established upon a more solid foundation. For this reason the law is established, which no passion can disturb. 'Tis void of desire and fear, lust and anger. 'Tis mens sine affectu,7 written reason, retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but without any regard to persons commands that which is good, and punishes evil in all, whether rich or poor, high or low. 'Tis deaf, inexorable, inflexible. By this means every man knows when he is safe or in danger, because he knows whether he has done good or evil. But if all depended upon the will of a man, the worst would be often the most safe, and the best in the greatest hazard: Slaves would be often advanced, the good and the brave scorn'd and neglected. The most generous nations have above all things sought to avoid this evil: and the virtue, wisdom and generosity of each may be discern'd by the right fixing of the rule that must be the guide of every man's life, and so constituting their magistracy that it may be duly observed. Such as have attained to this perfection, have always flourished in virtue and happiness: They are, as Aristotle says, governed by God, rather than by men, whilst those who subjected themselves to the will of a man were governed by a beast.
This being so, our author's next clause, that tho a king do frame all his actions to be according unto law, yet he is not bound thereunto, but as his good will, and for good example, or so far forth as the general law for the safety of the commonwealth doth naturally bind him,8 is wholly impertinent. For if the king who governs not according to law, degenerates into a tyrant, he is obliged to frame his actions according to law, or not to be a king; for a tyrant is none...]

Maxims

https://famguardian.org/TaxFreedom/LegalRef/MaximsOfLaw.htm

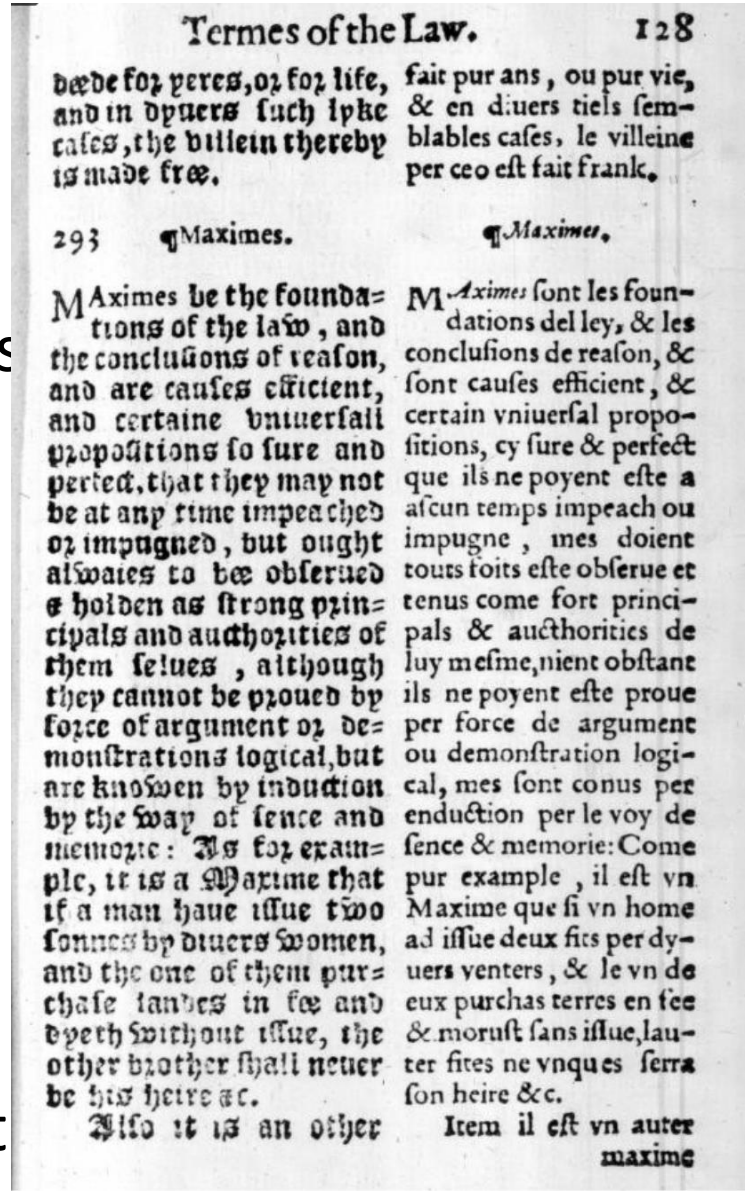
Termes de la Ley

Article Talk

Expositiones terminorum legum Angliae ('Explanation of legal terms used in England') (1527) is a legal glossary compiled by John Rastell. Although the title is in Latin, the work was written in Law French. This Law French edition did not reappear. However, it was translated by his son, William Rastell, into English and published in 1563 as *An Exposition of Certaine Difficult and Obscure Wordes and Termes of the Lawes of This Realme*.[1][2] Many editions followed through 1618. After 1620, the work was published and known as *Les Termes de la Ley*, and it was also often reprinted under that title.[3]

John Rastell- Expositiones terminorum legum Angliae ('Explanation of legal terms used in England') (1527)

Maximes are the Foundations of the Law, and the Conclusions of Reason, and are Causes efficient, and certain universal propositions so sure and perfect, that they may not be at any time impeached or impugned, but ought alwayes to be observed , and holden as strong Principles and Authorities of themselves, although they cannot be proved by force of Argument of Demonstrations Logical, but are known by induction by the way of sense and memory. For example, It is a Maxime That If a man have issue two Sons by diverse women, and the one purchases Lands in fee, and dies without issue, the other shall never be his Heir, etc.



Termes of the Law. 128

dæde for yeres, or for life, and in dyuers such lyke cases, the villein thereby is made free.

fait pur ans, ou pur vie, & en diuers tiels semblables cases, le villeine per ceo est fait frank.

293 ¶Maximes.

MAximes be the foundations of the law, and the conclusions of reason, and are causes efficient, and certaine vniuersall propositions so sure and perfect, that they may not be at any time impeached or impugned, but ought alwaies to bee obserued & holden as strong principals and authorities of them selues, although they cannot be proued by force of argument or demonstrations logical, but are knowen by induction by the way of sence and memorie: As for example, it is a Maxime that if a man haue issue two sonnes by diuers women, and the one of them purchase landes in fee and dyeth without issue, the other brother shall neuer be his heire &c.

Also it is an other

¶*Maximes.*

M*Aximes* sont les foundations del ley, & les conclusions de reason, & sont causes efficient, & certain vniuersal propositions, cy sure & perfect que ils ne poyent este a ascun temps impeach ou impugne, mes doient touts foits este obserue et tenus come fort principals & authorities de luy mesme, nient obstant ils ne poyent este proue per force de argument ou demonstration logical, mes sont conus per enduction per le voy de sence & memorie: Come pur example, il est vn Maxime que si vn home ad issue deux fits per dyuers venters, & le vn de eux purchas terres en fee & moruist sans issue, lauter fites ne vnques serra son heire &c.

Item il est vn auter maxime

MAX'IM, *noun* [Latin maximum, literally the greatest.]
1. An established principle or proposition; a principle generally received or admitted as true. It is nearly the same in popular usage, as axiom in philosophy and mathematics.
Webster's 1828

Among many things, you will even question laws and learned men.

No one may sue at law in the name of another

It is the duty of a judge to declare, not make law

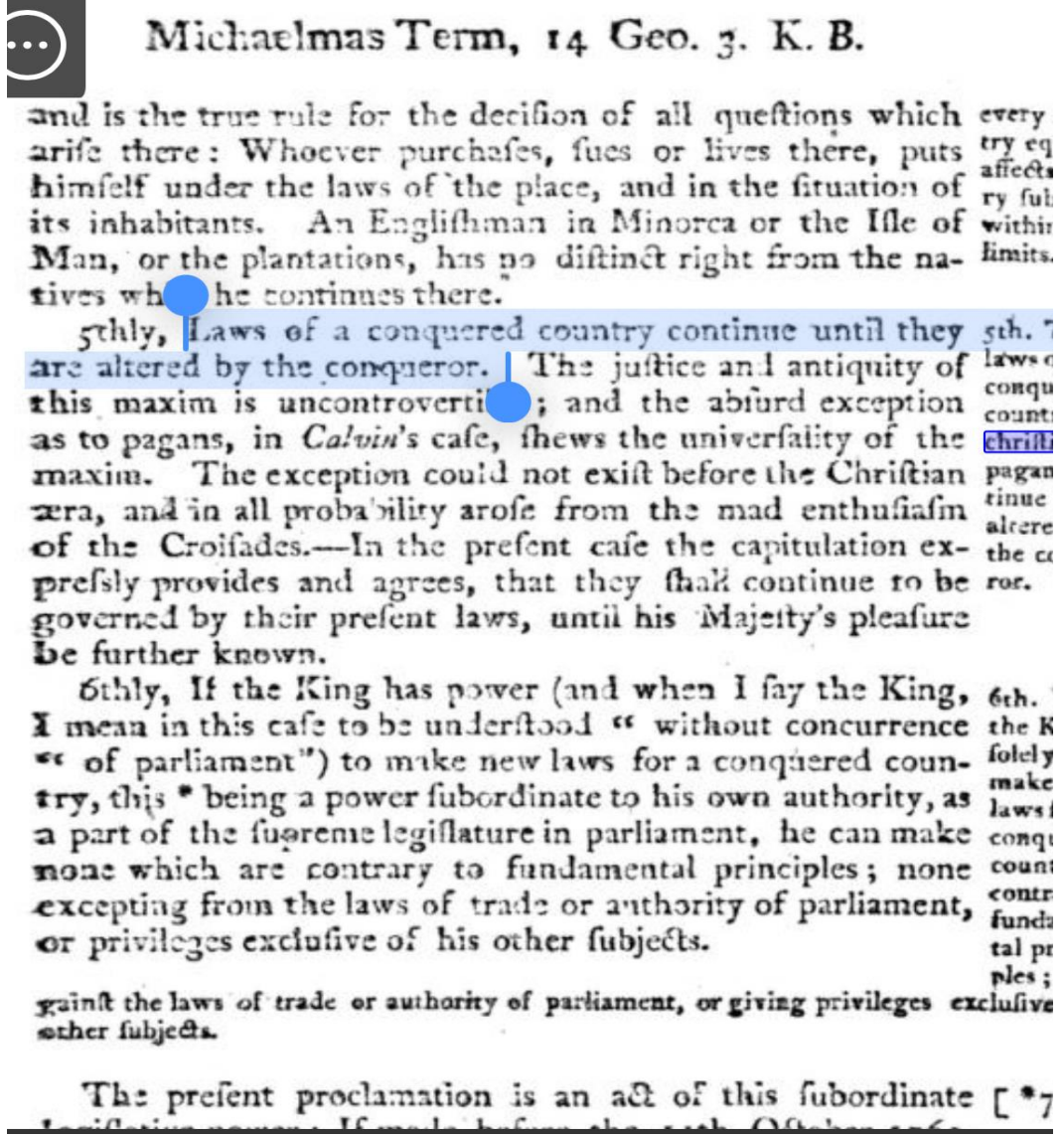
The Law of God and the law of the land are all one, and both favor and preserve the common good of the land.

Civil law / equity Maxims

What pleases the prince has the force of law. (Quod principi placuit legis habet vigorem.) Roman Civil Maxim
.

Monarchies
Fundamental Law
Court Maxims

[...If the King has power (and when I say the King, I in this case to be understood without concurrence of parliament) to make new laws for a conquered country, he can make none which are contrary to fundamental principles; none except from the laws of trade or authority of parliament, or privileges exclusive of his other subjects...]



Michaelmas Term, 14 Geo. 3. K. B.

and is the true rule for the decision of all questions which arise there: Whoever purchases, sues or lives there, puts himself under the laws of the place, and in the situation of its inhabitants. An Englishman in Minorca or the Isle of Man, or the plantations, has no distinct right from the natives while he continues there.

5thly, Laws of a conquered country continue until they are altered by the conqueror. The justice and antiquity of this maxim is uncontroverted; and the absurd exception as to pagans, in *Calvin*'s case, shews the universality of the maxim. The exception could not exist before the Christian æra, and in all probability arose from the mad enthusiasm of the Croisades.—In the present case the capitulation expressly provides and agrees, that they shall continue to be governed by their present laws, until his Majesty's pleasure be further known.

6thly, If the King has power (and when I say the King, I mean in this case to be understood "without concurrence "of parliament") to make new laws for a conquered country, this * being a power subordinate to his own authority, as a part of the supreme legislature in parliament, he can make none which are contrary to fundamental principles; none excepting from the laws of trade or authority of parliament, or privileges exclusive of his other subjects.

gainst the laws of trade or authority of parliament, or giving privileges exclusive other subjects.

The present proclamation is an act of this subordinate [*7

https://archive.org/details/bub_gb_1OYvAAAAIAAJ

[Work-IN PROGRESS]

Biblical Fundamental Law for Monarchies

Duet. 17:14

Laws concerning Monarchies
God allowed for a King .. with rules
1.no foreigners as king, hereditary succession
1. No private standing armies (horses chariots)
2. No squiring excessive silver and gold
3. No concubine/polygamy
4. All the above is to be written down, this IS the law and statutes, keeping all the scriptures , not exalting himself

1 Samuel. 8

Samuel made his sons Judges.. were judges to be hereditary also?
Samuel's sons did not walk in his ways (Samuel's ways)
They turned aside for gain.. something Sam was not doing
(I'm assuming the fundamental laws prescribed to Kings would be applicable to judges)
Bribery : perverting justice
The People said to him You are old/ your so sons do not walk in "your ways" (Sam' ways).. What about God's ways?

[Include Solomon's fundamental requirements]

https://archive.org/details/bub_gb_1OYvAAAAIAAJ

Court Maxims , Algernon Sydney

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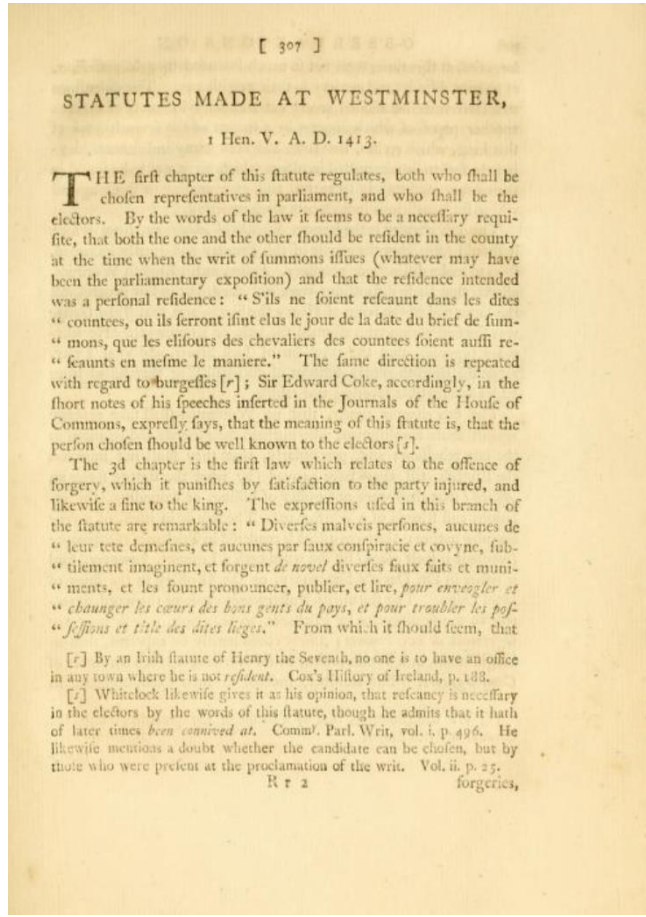
English Courts

[..William I set up the Curia Regis, or King's Court, to stand side by side with the feudal courts, ecclesiastic and custom law courts, and would travel with the king within the realm, to hear petitions of his subjects, before he would rule. During the twelfth and thirteenth centuries, greater numbers of individuals would seek the kings justice due to dissatisfaction with the local laws, which they saw as unfair and unjust.[9] The king began to leave decisions that could be dealt with under existing laws to the autonomy of the curia regis, and to enable his obligations to be met the king began to appoint 'justiciars', or judges, whom were official representatives of the King, knowledgeable about the law.[10]
Over time a split of the curia regis occurred, one part became a permanent body of justices of the Curia Regis, formed to hear the 'common pleas', and became known as the Bench of Common Pleas. This Court would no longer travel with the King and would sit in a central location at Westminster, as ratified by the Magna Carta.[11] The other part was the 'Justices in Eyre', effectively as a sub-branch of the curia regis. These itinerant judges would travel to various regions of the country, known as 'circuits', to resolve disputes on behalf of the king and would apply law consistently. The idea of this was to replace the local courts with authoritative courts of the king that were accessible by the people, and it is notable that the decisions, not reasoning, of these courts were recorded.[12]
As such the body of law created by these judges formed much of the basis of the common law.
Two other courts, formed from the curia regis, that were important for the basis of the common law being developed were the Court of Exchequer, which was primarily set up of advisors to hear disputes of a financial nature, and secondly the coram rege, or Kings Bench who were kings direct advisors, responsible for business affecting the king.[13]
Thus the three common law courts had developed, all empowered by the king, and all operated by professional judges who were knowledgeable in law and able to dispense with the same (common) law across the realm. This centralisation of the courts enabled a small group of legal individuals to flourish, developing a legal procedure that was repeatable and controllable, empowered initially by the king. It is true that there were numerous other courts that were developed for other areas of law, such as equity, admiralty and ecclesiastical, and that these other courts had to find a functional balance with the common law and vice versa, and also integrate statutes from the king and later parliament, but the three common law courts, and revisions of like over the next four centuries, ensured the platform for the development of the common law.]
A Short History of the Common Law | Michael's General Musings

ESQUIRES

History of Esquires

The 5th chapter is the known Statute of Additions, from which it should seem, that the people of this country had greatly increased, so as to make distinctions neceffary. Fuller, in his English Worthies, asserts , that these distinctions were not used, but in law process, till the latter end of the reign of Henry the Sixth, and that John Golope was the first person who assumed the title of Esquire



[307]

STATUTES MADE AT WESTMINSTER,

1 Hen. V. A. D. 1413.

THE firſt chapter of this ſtatute regulates, both who ſhall be choſen repreſentatives in parliament, and who ſhall be the electors. By the words of the law it ſeems to be a neceſſary requiſite, that both the one and the other ſhould be reſident in the county at the time when the writ of ſummons iſſues (whatever may have been the parliamentary expoſition) and that the reſidence intended was a perſonal reſidence: "S'ils ne ſoient reſeaunt dans les dites "countees, ou ils ſerront iſſint elus le jour de la date du brief de ſum- "mons, que les eliſours des chevaliers des countees ſoient auſſi re- "ſeaunts en meſme le maniere." The ſame direction is repeated with regard to burgeſſes [r]; Sir Edward Coke, accordingly, in the ſhort notes of his ſpeeches inſerted in the Journals of the Houſe of Commons, expreſly ſays, that the meaning of this ſtatute is, that the perſon choſen ſhould be well known to the electors [s].

The 3d chapter is the firſt law which relates to the offence of forgery, which it puniſhes by ſatisfaction to the party injured, and likewiſe a fine to the king. The expreſſions uſed in this branch of the ſtatute are remarkable: "Diverſes malveis perſones, aucunes de "leur tete demeſnes, et aucunes par faux conſpiracie et covyne, ſub- "tilement imaginent, et forgent *de novel* diverſes faux faits et muni- "ments, et les ſount pronouncer, publier, et lire, *pour enveagler et* "*chaunger les cœurs des bons gents du pays, et pour troubler les poſ-* "*ſeſſions et title des dites lieges.*" From which it ſhould ſeem, that

[r] By an Iriſh ſtatute of Henry the Seventh, no one is to have an office in any town where he is not *reſident*. Cox's Hiſtory of Ireland, p. 188.

[s] Whitelock likewiſe gives it as his opinion, that reſidency is neceſſary in the electors by the words of this ſtatute, though he admits that it hath of later times *been connived at*. Comm^t. Parl. Writ, vol. i. p. 496. He likewiſe mentions a doubt whether the candidate can be choſen, but by thoſe who were preſent at the proclamation of the writ. Vol. ii. p. 25.

R r 2 forgeries,

https://archive.org/details/observationsupon00barr

ESPLEES. The products which the land or ground yields; as the hay of the meadows, the herbage pasture, corn or other produce of the arable, rents and services. Termes de la Ley; see 11 Serg. & Dane's Ab. Index, h. t.

ESPOUSALS, contracts. A mutual promise between a man and a woman to marry each other, at other time: it differs from a marriage, because then the contract is completed. Wood's Inst. 57; vid 23, 1, 1; Code, 5, 1, 4; Novel, 115, c. 3, s. 11; Ayliffe's Parerg. 245 Aso & Man. Inst. B. 1, t. 6, c.

ESQUIRE. A title applied by courtesy to officers of almost every description, to members of the and others. No one is entitled to it by law, and, therefore, it confers, no distinction in law.

2. In England, it is a title next above that of a gentleman, and below a knight. Camden reckons up kinds of esquires, particularly regarded by the heralds: 1. The eldest sons of knights and their elde sons, in perpetual succession. 2. The eldest sons of the younger sons of peers, and their eldest sons like perpetual succession. 3. Esquires created by the king's letters patent, or other investiture, and eldest sons. 4. Esquires by virtue of their office, as justices of the peace, and others who bear any of trust under the crown.

ESSOIN, practice. An excuse which a party bound to be in court on a particular day, offers for no

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Esquire, (from the Fr. *Escu*, and the Lat. *Scutum*, in Greek σκυτος) which signifies an hide of which *Shields* were anciently made and afterwards covered: For here in the time of the *Saxons*, the shields had a covering of leather; so that an *esquire* was originally he who attending a knight in the time of war, did carry his *shield*, whence he was called *Escuier* in *French*, and *Scutifer* or *Armiger*, (*i. e.* armour-bearer) in *Latin*. *Hotoman* saith, that those which the *French* call *Esquires*, where a military kind of vassals, having *jus scuti*, *viz.* Liberty to bear a shield, and in it the ensigns of their family, in token of their gentility or dignity: But this addition hath not of long time had any relation to the office or employment of the person to whom it hath been attributed, as to carrying of arms, &c. but been merely a title of dignity, and next in degree to a knight. Those to whom this title is now of right due, are all the younger sons of noblemen, and the eldest sons

of such younger ſons; the eldeſt ſons of knights, and their eldeſt ſons; the officers of the King's courts and of the King's houſhold; counſellors at law; juſtices of peace, &c. But theſe latter, are *eſquires* in reputation; and he who is a juſtice of peace, has this title only during the time he is in commiſſion, and no longer, if he be not otherwiſe qualified to bear it. A ſheriff of a county being a ſuperior officer, retains the title of *Eſquire* during his life; in reſpect of the great truſt he has in the commonwealth. The chief of ſome ancient families are *eſquires* by preſcription; and in late acts of parliament for poll money, many wealthy perſons (commonly reputed to be ſuch) were ranked among the *eſquires* of this kingdom. *Blount.*

Eſquires of the King, Are ſuch who have the title by *creation:* Theſe, when they are created, have put about their necks a collar of *S S*, and a pair of *ſilver ſpurs* is beſtowed on them: And they were wont to bear before the Prince in war, a *ſhield* or lance. There are four *eſquires of the King's body*, to attend on his Majeſty's perſon. *Camb.* 111.

Eſſendi quietum de Tolonio, A writ to be quit of *toll*; and lies for citizens and burgeſſes of any city or town that by charter or preſcription ought to be exempted from *toll*, where the ſame is exacted of them. *Reg. Orig.*

From 1929 until its dissolution in 1945, the SS was headed by Heinrich Himmler, who built up the SS from fewer than 300 members to more than 50,000 by the time the Nazis came to power in 1933. Himmler, a racist fanatic, screened applicants for their supposed physical perfection and racial purity but recruited members from all ranks of German society. With their sleek black uniforms and special insignia (lightninglike runic S's, death's head badges, and silver daggers), the men of the SS felt superior to the brawling brown-shirted Storm Troopers of the SA, to which initially they were nominally subordinate.

SS, the black-uniformed elite corps and self-described "political soldiers" of the Nazi Party. Founded by Adolf Hitler in April 1925 as a small personal bodyguard, the SS grew with the success of the Nazi movement and, gathering immense police and military powers, became virtually a state within a state.

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A TABLE

OF

BRITISH REGNAL YEARS.

Sovereign.	Accession.	Length of reign.
William I.	Oct. 14, 1066	21
William II.	Sept. 26, 1087	13
Henry I.	Aug. 5, 1100	35
Stephen	Dec. 26, 1135	19
Henry II.	Dec. 19, 1154	35
Richard I.	Sept. 23, 1189	10
John	May 27, 1199	18
Henry III.	Oct. 28, 1216	57
Edward I.	Nov. 20, 1272	35
Edward II	July 8, 1307	20
Edward III.	Jan. 25, 1326	51
Richard II	June 22, 1377	23
Henry IV.	Sept. 30, 1399	14
Henry V.	March 21, 1413	10
Henry VI.	Sept. 1, 1422	39
Edward IV.	March 4, 1461	23
Edward V.	April 9, 1483	
Richard III.	June 26, 1483	2
Henry VII.	Aug. 22, 1485	24
Henry VIII.	April 22, 1509	38
Edward VI.	Jan. 28, 1547	7
Mary	July 6, 1553	6
Elizabeth	Nov. 17, 1558	45
James I.	March 24, 1603	23
Charles I.	March 27, 1625	24
The Commonwealth	Jan. 30, 1649	11
Charles II.	May 29, 1660	37
James II.	Feb. 6, 1685	4
William and Mary	Feb. 13, 1689	14
Anne	March 8, 1702	13
George I.	Aug. 1, 1714	13
George II.	June 11, 1727	34
George III.	Oct. 25, 1760	60
George IV.	Jan. 29, 1820	11
William IV.	June 26, 1830	7
Victoria	June 20, 1837	

(x)2

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https://en.wikipedia.org/wiki/List_of_English_statutes

https://en.wikipedia.org/wiki/List_of_acts_of_the_Parliament_of_England_from_166

ABBREVIATIONS and abbreviated references. The following list, though necessarily incomplete, may be useful to some readers.

A. a. the first letter of the alphabet, is sometimes used in the ancient law books to denote that the paging is the first of that number in the book. As an abbreviation, A is used for anonymous.

A. & A. on Corp. Angell & Ames on Corporations. Sometimes cited Ang. on Corp.
A. D. Anonymous Reports, printed at the end of Bendloe's Reports.
A. D. Anno Domini, in the year of our Lord
A. & E. Adolphus and Ellis' Reports.
A. & E. N. S. Adolphus & Ellis' Queen's Bench Reports, New Series, commonly cited Q. B.
A. & F. on Fixt. Amos & Ferard on Fixtures.
A. K. Marsh. A. K. Marshall's (Ky.) Reports.
Ab. or Abr. Abridgement.
Abr. ca. Eq. Abridgement of cases in Equity.
Abs. Absolute.
Ab. Sh. Abbott on Shipping.
Acc. Accord or Agrees.
Act. Acton's Reports.
Act. Reg. Acta Regia.
Ad. Eject. Adams on Ejectment.
Ad. & Ell. Adolphus & Ellis' Reports.
Ad. finn. Ad finem. At or near the end.

Ads. Ad sectum, vide Ats.
Addam's R. Addam's Ecclesiastical Reports. In E. Eccl. Rep.
Addis on Contr. Addison on the Law of Contracts and on Parties to actions ex contractu.
Addis. R. Addison's Reports.
Admr. Administrator.
Ady. C. M. Adye on Courts Martial.
Aik. R. Aiken's Reports.
Al. Aleyn's Cases.
Al. Alinea. Al et. Et alii, and others.
Al.& N. R. Alcock & Napier's Reports.
Ala. R. Alabama Reports.
Alc. Reg. G. Alcock's Registration Cases
Ald. & Van Hoes. Dig. A Digest of the Laws of Mississippi, by T. J. Fox Alden and J. A. Yan Hoesen.
Aldr. Hilt. Aldridge's History of the Courts of Law.
Alis. Prin. Alison's Principles of the Criminal Law of Scotland.
All. & Mor. Tr. Allen and Morris' Trial.
Alley. L. D. of Mar. Alleyne's Legal Degrees of Marriage considered.
Alln. Part. Allnat on Partition.
Am. America, American, or Americana.
Amb. Ambler's Reports.
Am. & Fer. on. Fixt. Amos & Ferard on Fixture's.
Amer. America, American, or Americana.
Amer. Dig. American Digest.
Amer. Jur. American Jurist.
Anon. Anonymous.
And. Anderson's Reports.
Ander. Ch. War. Anderson on Church Wardens.
Andr. Andrew's Reports.
Ang. on Adv. Enj. Angell's Inquiry into the rule of law which creates a

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them to draw the intereſt of any man *ad aliud examen*; and to judge againſt the rule of law, concerning the inheritance or intereſt of any, there prohibition lies: and in the caſe at the bar, they well reſolved the law, for by the ſaid livery of the charter the tithes do not paſs as groſs, for this, that the intention of the parties was to paſs the entire rectory by feoffment, and not to paſs the tithes by the ſame, and ſo to diſmember the rectory by fractions, and that by conſtruction of l[illegible] againſt the intention of the parties.

3. As to the third, it was anſwered and reſolved, that by the eccleſiaſtical law, a ſtranger may come in *pro intereſſe ſuo*; and when they have juriſdiction of the original cauſe of the ſuit, we ought not to draw in queſtion their order and proceeding; but if they proceed *inverſo ordine*, or not obſerving form, this ought to be redreſſed by appeal: and although that the matter depending upon the original cauſe be determinable by the common law, yet it ſhall be determined, as it hath been ſaid, in the Eccleſiaſtical Court.

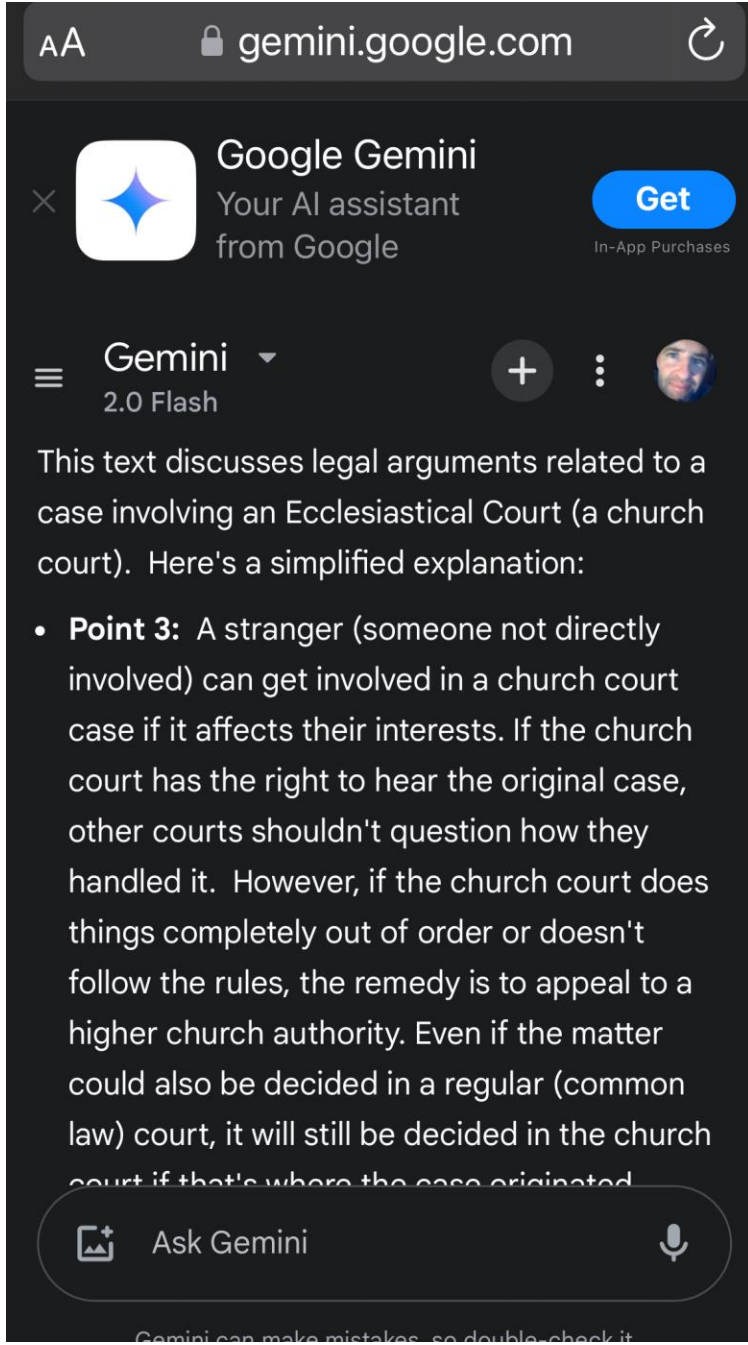
4. As to the fourth objection, it was anſwered and reſolved, that ſuch a ſurmiſe, that he hath but one witneſs, is not ſufficient to have a prohibition, for this, that the Eccleſiaſtical Court hath juriſdiction of the principal, and if ſuch a ſurmiſe ſhall be ſufficient, all ſuits in the Eccleſiaſtical Court ſhall be either delayed, or quite taken away, for ſuch a ſurmiſe may be made in every caſe; and the plaintiff in the Eccleſiaſtical Court cannot have any good anſwer to it to have a conſultation, which agrees with the reſolution in the principal caſe, &c.

---

*S M I T H's Caſe. Pa[illegible]

AI, explain in simpler terms: [highlight/cut & paste cokes OPINION]

Answer:
This text discusses legal arguments related to a case involving an Ecclesiastical Court (a church court). Here's a simplified explanation:
• Point 3: A stranger (someone not directly involved) can get involved in a church court case if it affects their interests. If the church court has the right to hear the original case, other courts shouldn't question how they handled it. However, if the church court does things completely out of order or doesn't follow the rules, the remedy is to appeal to a higher church authority. Even if the matter could also be decided in a regular (common law) court, it will still be decided in the church…,]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Ask Gemini

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common law, as 4 Ed. 3. 20. if the prefentee be dead, if he was able, or not able, ſhall be tried *per pais*; for the Biſhop cannot try it: but againſt this was objected the ſtatute *De Articulis cleri*, c. 13. by which it is provided, *quod de idoneitate perſonæ perſonatæ ad beneficium eccleſiaſticum, pertineat examinatio ad judicem eccleſiaſticum*; upon which it was concluded, that the trial *De idoneitate perſonæ*, in all caſes belongs to court-chriſtian. To which it was answered and reſolved, that true it is, that the trial of ability belongs to them; but the ſtatute explains in what manner it ſhall be made, for the ſtatute ſaith, *pertinet examinatio ad judicem eccleſiaſticum*, ſo that this trial ought to be by examination of the party, and this cannot be when the prefentee is dead:

quod de idoneitoteperfona perfonates ad beneficium eccleisasicum,pertineat examinatio ad judicem ecclesiasticum; upon which it was concluded, that the trial De idoneitate persons

that of fitness for the ecclesiastical benefit the examination belongs to the ecclesiastical judge; upon which it was concluded, that the trial on the fitness of persons

AA latin to english

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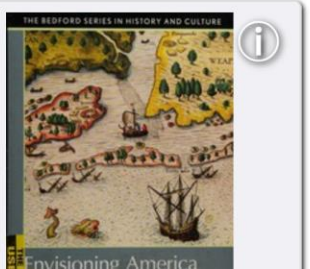

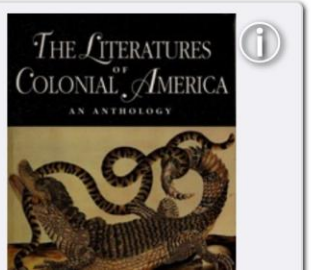

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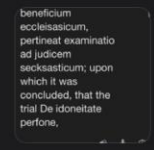

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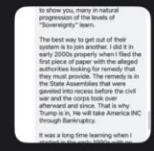

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good Diſpoſition will prevent him from making a
tempts upon our Liberties; ſo his Knowledge of o
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ingenious *(b)* Author obſerves, that " Some of the
" of the moſt Polite *Latin* and *Greek* Writers a
" as many very valuable Pieces of *French*, *Italian*
" pear in the ſame Dreſs." And this our Author ha
ſo little Preface or Ceremony, other than what was b
and to keep up Decorum, that the Subject falls in
and is ſo familiariſed, as all along to excite the Pri
and to enforce the Argument effectually: The *(c)*

(a) Atkins of the Power, *&c.* of Parliaments, *p.* 14.
(b) Mr. *Addiſon*'s Works I. 451. *v. Sigon.* de Dialogo.

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1 entry found.

codification (n.)

"act or process of reducing to a code or system," 1817 (Bentham), noun of action fr…

Idaho Sessions Babel Hathitrust

https://babel.hathitrust.org/cgi/ls?q1=Laws+of+the+Territory+of+Idaho&field1=ocr&a=srchls&ft=ft&lmt=ft

https://www.uidaho.edu/-/media/UIdaho-Responsive/Files/law/library/legal-research/guides/idaho-legislative-history.pdf

American lexicographers
Abbott,
Anderson
Bouvier
Burrill
Rapalje
Lawrence

English & American law dictionaries
Dalloz
Bell
Escriche
Blackstone
Kent
Bouvier
Various codes and statutes and the reports, text-books on special topics of the law.

English law dictionaries
Cowell
Spelman
Blount
Jacob
Cunningham
Whishaw
Skene
Tomlins
"Termes de la Ley,"
Bracton
Littleton
Coke
Other misc. sages

Roman and modern civil law
Calvinus
Scheller
Vicat
Brown
Burrill
Mackeldey
Hunter
Browne
Hallifax
Wolff
Maine
Gaius and the Corpus Juris Civilis.

French, Spanish, and Scotch law
treatises of
Pothier
Merlin
Toullier
Schmidt
Argles
Hall
White
and others
the commentaries
Erskine
Bell

of these judicial definitions have been literally copied and adopted as the author's definition of the particular term, of course with a proper reference. But as the constant aim has been to present a definition at once concise, comprehensive, accurate, and lucid, he has not felt bound to copy the language of the courts in any instance where, in his judgment, a better definition could be found in treatises of acknowledged authority, or could be framed by adaptation or re-arrangement. But many judicial interpretations have been added in the way of supplementary matter to the various titles.

The more important of the synonyms occurring in legal phraseology have been carefully discriminated. In some cases, it has only been necessary to point out the correct and incorrect uses of these pairs and groups of words. In other cases, the distinctions were found to be delicate or obscure, and a more minute analysis was required.

A complete collection of legal maxims has also been included, comprehending as well those in English and Law French as those expressed in the Latin. These have not been grouped in one body, but distributed in their proper alphabetical order through the book. This is believed to be the more convenient arrangement.

It remains to mention the sources from which the definitions herein contained have been principally derived. For the terms appertaining to old and middle English law and the feudal polity, recourse has been had freely to the older English law dictionaries,(such as those of Cowell, Spelman, Blount, Jacob, Cunningham, Whishaw, Skene, Tomlins, and the "Termes de la Ley,") as also to the writings of Bracton, Littleton, Coke, and the other sages of the early law. The authorities principally relied on for the terms of the Roman and modern civil law are the dictionaries of Calvinus, Scheller, and Vicat, (with many valuable suggestions from Brown and Burrill,) and the works of such authors as Mackeldey, Hunter, Browne, Hallifax, Wolff, and Maine, besides constant reference to Gaius and the *Corpus Juris Civilis*. In preparing the terms and phrases of French, Spanish, and Scotch law, much assistance has been derived from the treatises of Pothier, Merlin, Toullier, Schmidt, Argles, Hall, White, and others, the commentaries of Erskine and Bell, and the dictionaries of Dalloz, Bell, and Escriche. For the great body of terms used in modern English and American law, the author, besides searching the codes and statutes and the reports, as already mentioned, has consulted the institutional writings of Blackstone, Kent, and Bouvier, and a very great number of text-books on special topics of the law. An examination has also been made of the recent English law dictionaries of Wharton, Sweet, Brown, and Mozley & Whitley, and of the American lexicographers, Abbott, Anderson, Bouvier, Burrill, and Rapalje & Lawrence. In each case where aid is directly levied from these sources, a suitable acknowledgment has been made. This list of authorities is by no means exhaustive, nor does it make mention of the many cases in which the definition had to be written entirely *de novo;* but it will suffice to show the general direction and scope of the author's researches.

H. C. B.

WASHINGTON, D. C., August 1, 1891.

Oaths, Covenants, standing armies, trading with the enemy

2 chronicles 36:13

'The king of Babylon went to Jerusalem and carried off her king and her nobles, bringing them back with him to Babylon. 13 Then he took a member of the royal family and made a TREATY with him, putting him under OATH. He also carried away the leading men of the land, 14 so that the kingdom would be brought low, unable to rise again, surviving only by keeping his TREATY. 15 But the king rebelled against him by sending his envoys to Egypt to get horses and a large army. Will he succeed? Will he who does such things escape? Will he break the TREATY and yet escape?

16 ''As surely as l live, declares the Sovereign Lord, he shall die in Babylon, in the land of the king who put him on the throne, whose OATH he despised and whose TREATY he broke. 17 Pharaoh with his mighty army and great horde will be of no help to him in war, when ramps are built and siege works erected to destroy many lives. 18 He despised the OATH by breaking the COVENANT.

https://www.biblegateway.com/passage/?search=Ezekiel%2017-18&version=NIV

I. The sins that brought this desolation.

1. Zedekiah, the king in whose days it came, brought it upon himself by his own folly; for he conducted himself very ill both towards God and towards the king of Babylon. (1.) If he had but made God his friend, that would have prevented the ruin. Jeremiah brought him messages from God, which, if he had given due regard to them, might have secured a lengthening of his tranquillity; but it is here charged upon him that he *humbled not himself before Jeremiah,* v. 12. It was expected that this mighty prince, high as he was, should humble himself before a poor prophet, when *he spoke from the mouth of the Lord,* should submit to his admonitions and be amended by them, to his counsels and be ruled by them, should lay himself under the commanding power of the word of God in his mouth; and, because he would not thus make himself a servant to God, he was made a slave to his enemies. God will find some way or other to humble those that will not humble themselves. Jeremiah, as a prophet, was set *over the nations and kingdoms* (Jer. 1:10), and, as mean a figure as he made, whoever would not humble

Jeremiah, as a prophet, was set *over the nations and kingdoms* (Jer. 1:10), and, as mean a figure as he made, whoever would not humble themselves before him found that it was at their peril. (2.) If he had but been true to his covenant with the king of Babylon, that would have prevented his ruin; but he *rebelled against him,* though he had sworn to be his faithful tributary, and perfidiously violated his engagements to him, v. 13. It was this that provoked the king of Babylon to deal so severely with him as he did. All nations looked upon an oath as a sacred thing, and on those that durst break through the obligations of it as the worst of men, abandoned of God and to be abhorred by all mankind. If therefore Zedekiah falsify his oath, *when, lo, he has given his hand,* he *shall not escape,* Eze. 17:18. Though Nebuchadnezzar was a heathen, an enemy, yet if, having sworn to him, he be false to him, he shall know *there is a God to whom vengeance belongs.* The thing that ruined Zedekiah was not only that he *turned not to the Lord God of Israel,* but that he *stiffened his neck and hardened his heart from turning to him,* that is, he as obstinately resolved not to return to him, would not lay his neck under God's yoke nor his heart under the impressions of his word, and so, in effect, he *would not be healed,* he *would not live.*

2. The great sin that brought this destruction was idolatry. The priests and people went after *the abominations of the heathen,* forsook the pure worship of God for the lewd and filthy rites of the Pagan superstition, and so *polluted the house of the Lord,* v. 14. The priests, the chief of the priests, who should have opposed idolatry, were ring-leaders in it. That place is not far from ruin in which religion is already ruined.

3. The great aggravation of their sin, and that which filled the measure of it, was the abuse they gave to God's prophets, who were sent to call them to repentance, v. 15, 16. Here we have, (1.) God's tender compassion towards them in sending prophets to them. Because he was the *God of their fathers,* in covenant with them, and whom they worshipped (though this degenerate race forsook him), therefore he *sent to them by his messengers,* to convince them of their sin and warn them of the ruin they would bring upon themselves by it, *rising up betimes and sending,* which denotes not only that he did it with the greatest care and concern imaginable, as men rise betimes to set their servants to work when their heart is upon their business, but that, upon their first deviation from God to idols, if they took but one step that way, God immediately sent to them by his messengers to reprove them for it. He gave them early timely notice both of their duty and danger. Let this quicken us to seek God early, that he rises betimes to send to us. The prophets that were sent rose betimes to speak to them, were diligent and faithful in their office, lost no time, slipped no opportunity of dealing with them; and therefore God is said to rise betimes. The more pains ministers take in their work the more will the people have to answer for if it be all in vain. The reason given why God by his prophets did thus strive with them is because *he had compassion on his people and on his dwelling-lace,* and would by these means have prevented their ruin. Note, The methods God takes to reclaim sinners by his word, by ministers, by conscience, by providences, are all instances of his compassion towards them and his unwillingness *that any should perish*. (2.

2 Chronicles 36:16-17

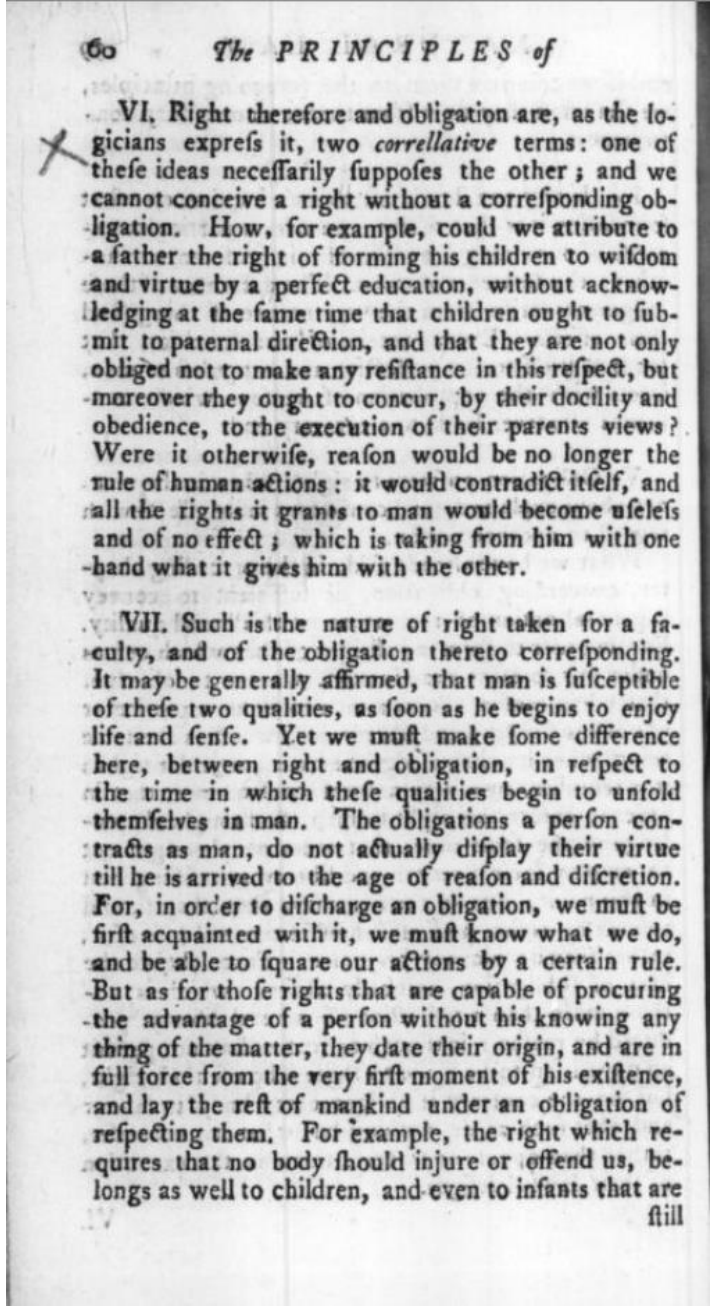
16 But they mocked God’s messengers, despised his words and scoffed at his prophets until the wrath of the Lord was aroused against his people and there was no remedy. **17** He brought up against them the king of the Babylonians,[a] who killed their young men with the sword in the sanctuary, and did not spare young men or young women, the elderly or the infirm. God gave them all into the hands of Nebuchadnezzar.

https://www.christianity.com/bible/commentary/matthew-henry-complete/2-chronicles/36

Abortion

But as for those rights that are capable of procuring the advantage of a person without his knowing any thing of the matter, they date their origin, and are in full force from the very first moment of his existence, and lay the rest of mankind under an obligation of respecting them, For example, the right which requires that no body should injure or offend us, belongs as well to children, and-even to infants that are still in their mothers wombs as to adult persons.

This is the foundation of that equitable rule of the Roman law, which declares, * That infants who are as yet in their mothers wombs, are considered as already brought into the world, whenever the question relates to any thing that may turn to their advantage.
But we cannot with any exactness affirm, that an infant whether already come or coming into the world, is actually subject to any obligation with respect to other men. This state does not properly commence with respect to man, till he has attained the age of knowledge and discretion...]



60 *The* PRINCIPLES *of*

VI. Right therefore and obligation are, as the logicians expreſs it, two *correllative* terms: one of theſe ideas neceſſarily ſuppoſes the other; and we cannot conceive a right without a correſponding obligation. How, for example, could we attribute to a father the right of forming his children to wiſdom and virtue by a perfect education, without acknowledging at the ſame time that children ought to ſubmit to paternal direction, and that they are not only obliged not to make any reſiſtance in this reſpect, but moreover they ought to concur, by their docility and obedience, to the execution of their parents views? Were it otherwiſe, reaſon would be no longer the rule of human actions: it would contradict itſelf, and all the rights it grants to man would become uſeleſs and of no effect; which is taking from him with one hand what it gives him with the other.

VII. Such is the nature of right taken for a faculty, and of the obligation thereto correſponding. It may be generally affirmed, that man is ſuſceptible of theſe two qualities, as ſoon as he begins to enjoy life and ſenſe. Yet we muſt make ſome difference here, between right and obligation, in reſpect to the time in which theſe qualities begin to unfold themſelves in man. The obligations a perſon contracts as man, do not actually diſplay their virtue till he is arrived to the age of reaſon and diſcretion. For, in order to diſcharge an obligation, we muſt be firſt acquainted with it, we muſt know what we do, and be able to ſquare our actions by a certain rule. But as for thoſe rights that are capable of procuring the advantage of a perſon without his knowing any thing of the matter, they date their origin, and are in full force from the very firſt moment of his exiſtence, and lay the reſt of mankind under an obligation of reſpecting them. For example, the right which requires that no body ſhould injure or offend us, belongs as well to children, and even to infants that are ſtill

https://archive.org/details/bim_eighteenth-century_the-principles-of-natura_burlamaqui-j-j-jean-_1776

Man from his birth is wholly unable to provide for the least of his necessities; but the love of his parents supplies for this weakness.

This is one of the most powerful laws of nature. The principal duties it imposes on the parents, are to bestow on the child all the care its weakness requires, to provide for its necessary food and clothing, to instruct it, to provide for its wants, and to use coercive means for its good, when requisite.

Kuber, Droit des Gens Modeme de l'Europe; Dumont, Corps Diplomatique; Mably, Droit Public de l'Europe; Kent's Comm. Lecture 1.

LAW OF NATURE. The law of nature is that which God, the sovereign of the universe, has prescribed to all men, not by any formal promulgation, but by the internal dictate of reason alone. It is discovered by a just consideration of the agreeableness or disagreeableness of human actions to the nature of man; and it comprehends all the duties which we owe either to the Supreme Being, to ourselves, or to our neighbors; as reverence to God, self-defence, temperance, honor to our parents, benevolence to all, a strict adherence to our engagements, gratitude, and the like. Erskine's Pr. of L. of Scot. B. 1, t. 1, s. 1. See Ayl. Pand. tit. 2, p. 5; Cicer. de Leg. lib. 1.

2. The primitive laws of nature may be reduced to six, namely: 1. Comparative sagacity, or reason. 2. Self-love. 3. The attraction of the sexes to each other. 4. The tenderness of parents towards their children. 5. The religious sentiment. 6. Sociability.

3.-1. When man is properly organized, he is able to discover moral good from moral evil; and the study of man proves that man is not only an intelligent, but a free being, and he is therefore responsible for his actions. The judgment we form of our good actions, produces happiness; on the contrary the judgment we form of our bad actions produces unhappiness.

4.-2. Every animated being is impelled by nature to his own preservation, to defend his life and body from injuries, to shun what may be hurtful, and to provide all things requisite to his existence. Hence the duty to watch over his own preservation. Suicide and duelling are therefore contrary to this law; and a man cannot mutilate himself, nor renounce his liberty.

5.-3. The attraction of the sexes has been provided for the preservation of the human race, and this law condemns celibacy. The end of marriage proves that polygamy, (q.v.) and polyendry, (q.v.) are contrary to the law of nature. Hence it follows that the husband and wife have a mutual and exclusive right over each other.

6.-4. Man from his birth is wholly unable to provide for the least of his necessities; but the love of his parents supplies for this weakness. This is one of the most powerful laws of nature. The principal duties it imposes on the parents, are to bestow on the child all the care its weakness requires, to provide for its necessary food and clothing, to instruct it, to provide for its wants, and to use coercive means for its good, when requisite.

7.-5. The religious sentiment which leads us naturally towards the Supreme Being, is one of the attributes which belong to humanity alone; and its importance gives it the rank of the moral law of nature. From this sentiment arise all the sects and different forms of worship among men.

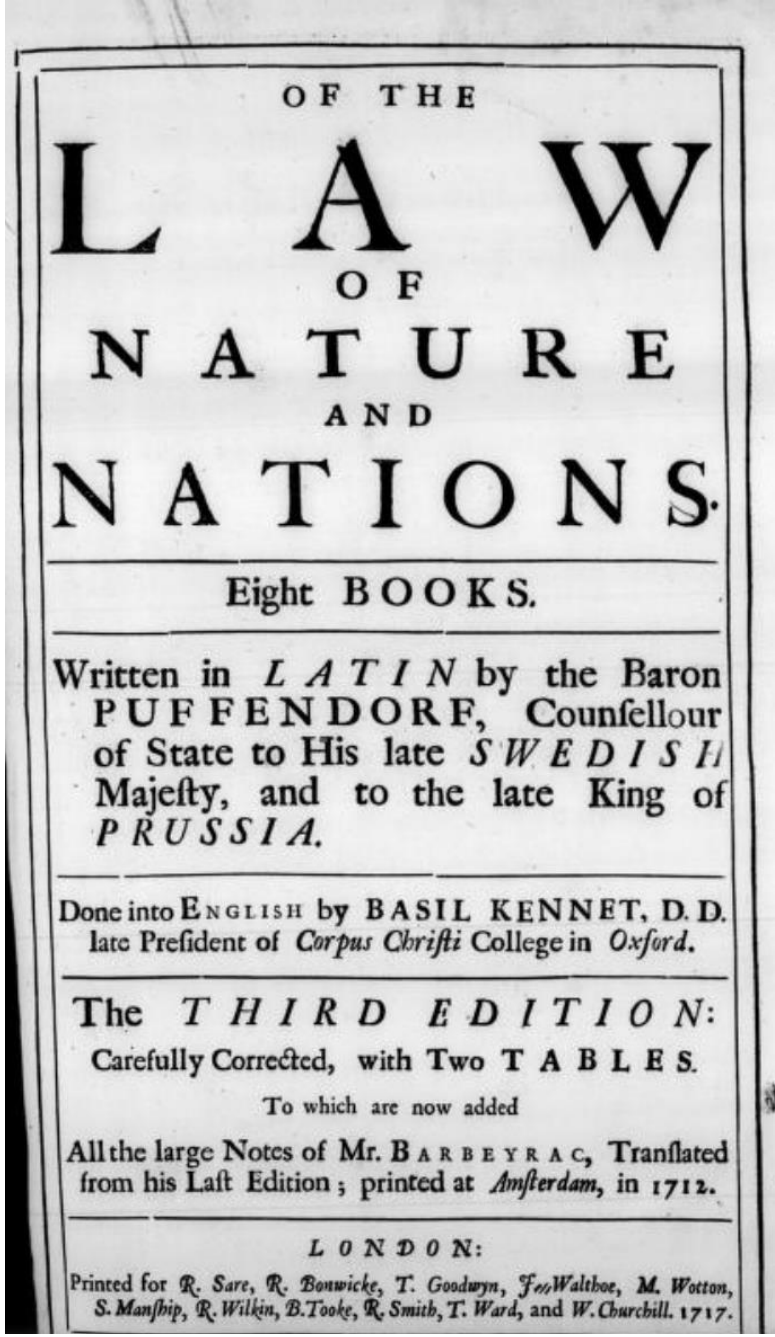
8.-6. The need which man feels to live in society, is one of the primitive laws of nature, whence flow our duties and rights; and the existence of society depends upon the condition that the rights of all shall be respected. On this law are based the assistance, succors and good offices which men owe to each other, they being unable to provide each every thing for himself.

LAW, PENAL. One which inflicts a penalty for a violation of its enactment.

LAW, POSITIVE. Positive law, as used in opposition to natural law, may be considered in a threefold point of view. 1. The universal voluntary law, or those rules which are presumed to be law, by the uniform practice of nations in general, and by the manifest utility of the rules themselves. 2. The customary law, or that which, from motives of convenience, has, by tacit, but implied agreement, prevailed, not generally indeed among all nations, nor with so permanent a utility as to become a portion of the universal voluntary law, but enough to have acquired a prescriptive obligation among certain states so situated as to be mutually benefited by it. 1 Taunt. 241. 3. The conventional law, or that which is agreed between particular states

https://archive.org/details/7817906-bouvier-s-common-law-dictionary/page/829/mode/1up?q=Primitive

Hence, it being a general Right and Privilege of all Men not to be Hurt by Others, if the Body of a fetus in the Womb should suffer any unlawful Violence, the Injury is not only done to the Parents, but to the Child ; who, we suppose, may in his own Name demand Justice on that score, when he is grown up to Knowledge of the Action…] […he hath indeed broken the Law of Nature, by intercepting a Member of Human Society, and hath done an injury to the Commonwealth, and to the Parents, by depriving them of their promised Citizen and Offspring.



OF THE

LAW OF NATURE AND NATIONS.

Eight BOOKS.

Written in *LATIN* by the Baron PUFFENDORF, Counſellour of State to His late *SWEDISH* Majeſty, and to the late King of *PRUSSIA*.

Done into ENGLISH by BASIL KENNET, D.D. late Preſident of *Corpus Chriſti* College in *Oxford*.

The *THIRD EDITION*: Carefully Corrected, with Two TABLES.

To which are now added

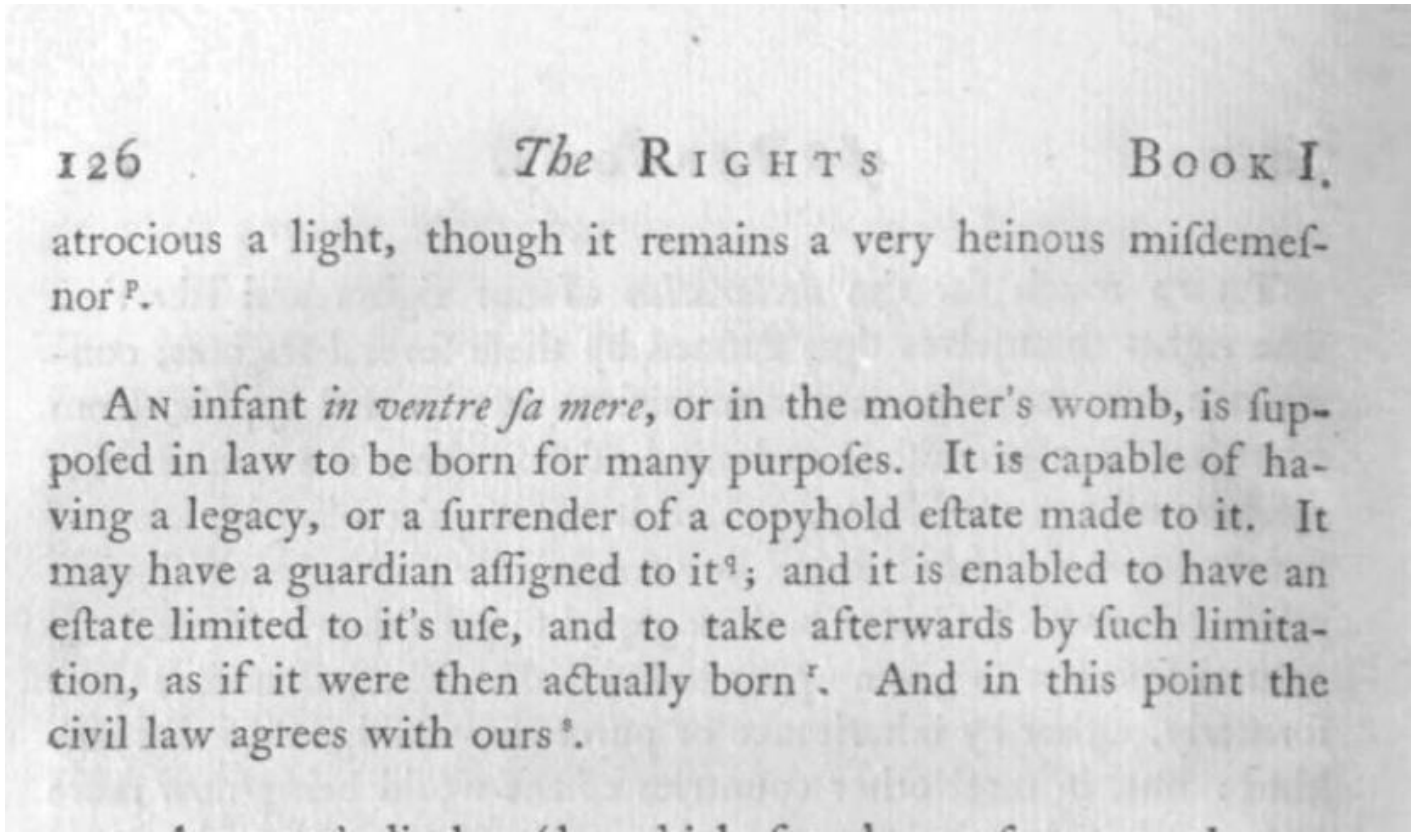
All the large Notes of Mr. BARBEYRAC, Tranſlated from his Laſt Edition; printed at *Amſterdam*, in 1712.

LONDON:

Printed for *R. Sare, R. Bonwicke, T. Goodwyn, Fra. Walthoe, M. Wotton, S. Manſhip, R. Wilkin, B. Tooke, R. Smith, T. Ward*, and *W. Churchill*. 1717.

https://archive.org/details/bim_eighteenth-century_of-the-law-of-nature-and_pufendorf-samuel-freih_1717

The Rights
Book 1
Pg. 126
An infant in ventre la mere, or in the mother's womb, is suppposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it. It may have a guardian aligned to it and it is enabled to have an estate limited to it's use, and to take afterwards by such limitation, as if it were then actually born. And in this point the civil law agrees with ours.



126 *The* RIGHTS BOOK I.

atrocious a light, though it remains a very heinous misdemesnor [p].

AN infant *in ventre sa mere*, or in the mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it. It may have a guardian assigned to it [q]; and it is enabled to have an estate limited to it's use, and to take afterwards by such limitation, as if it were then actually born [r]. And in this point the civil law agrees with ours [s].

Jeremiah 1:5
Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb I sanctified thee…*]*

https://archive.org/details/BlackstoneVolumeI

Organic Act for the territory of Idaho
1864
Crimes and punishments
Abortion
Sec. 42.
[… every person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use or cause to be used, any instruments whatever, with the intention to procure the miscarriag of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less tban two years, nor more than five years : Provided, That no physician shall be effected by the la clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.

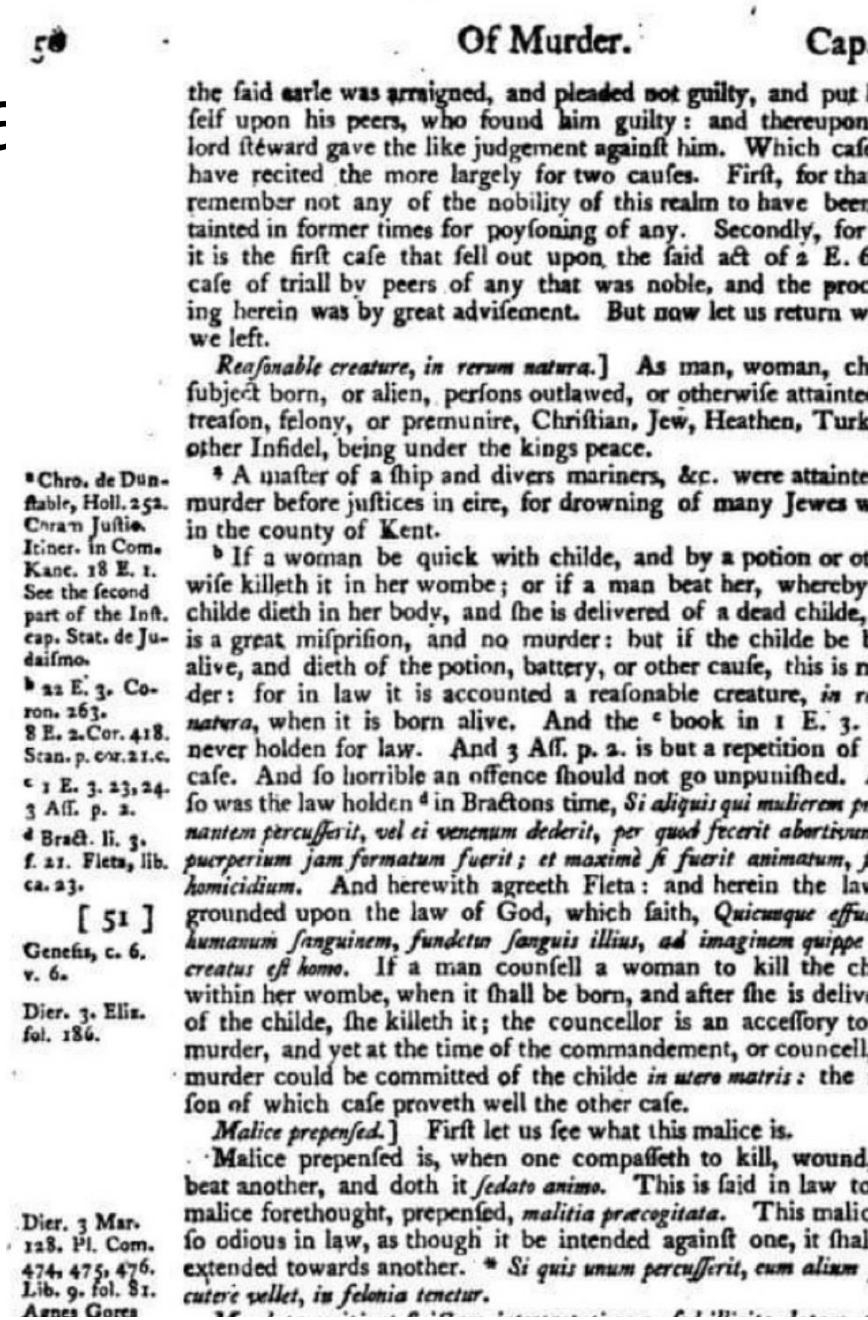
It shall be the duty of all military, civil, and peace officers in this territory, to be vigilant in carrying the provisions of this act into full force and effect, as well, also, as all grand juries, or grand jurors, to enquire into and make presentments of each and every offence under this act, which shall come under or within their knowledge. It shall be, and is hereby made the duty of all judges in this territory to give this act in charge to the grand juries, at each term of their respective courts; and also, to all trial juries, empaneled for the trial of any of the offences herein before mentioned in this act.

SEC. 41. If any person shall assault and beat another, with a cowhide, stick, or whip, having at the time, in his possession, a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the territorial prison not less than one, nor more than ten years.

SEC. 42. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than ten years, and which may extend to life; and every person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use or cause to be used, any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years: *Provided*, That no physician shall be effected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.

https://archive.org/details/lawsterritoryid03idahoog

If a woman be quick with childe, and by a potion or other wife killeth it in her wombe; or if a man beat her, whereby the childe dieth in her body, and the is delivered of a dead childe, this is a great misprison , and no murder: but if the childe be born alive, and dieth of the potion, battery, or other cause, this is murder: for in law it is accounted a reasonable creature, in rerum natura, when it is born alive,


58 Of Murder. Cap.

the ſaid earle was arraigned, and pleaded not guilty, and put h
ſelf upon his peers, who found him guilty: and thereupon
lord ſteward gave the like judgement againſt him. Which caſe
have recited the more largely for two cauſes. Firſt, for tha
remember not any of the nobility of this realm to have been
tainted in former times for poyſoning of any. Secondly, for
it is the firſt caſe that fell out upon the ſaid act of 2 E. 6
caſe of triall by peers of any that was noble, and the proc
ing herein was by great adviſement. But now let us return w
we left.

Reaſonable creature, in rerum natura.] As man, woman, ch
ſubject born, or alien, perſons outlawed, or otherwiſe attainte
treaſon, felony, or premunire, Chriſtian, Jew, Heathen, Turk
other Infidel, being under the kings peace.

[a] A maſter of a ſhip and divers mariners, &c. were attainte
murder before juſtices in eire, for drowning of many Jewes w
in the county of Kent.

[b] If a woman be quick with childe, and by a potion or ot
wife killeth it in her wombe; or if a man beat her, whereby
childe dieth in her body, and ſhe is delivered of a dead childe,
is a great miſpriſion, and no murder: but if the childe be
alive, and dieth of the potion, battery, or other cauſe, this is n
der: for in law it is accounted a reaſonable creature, *in r*
natura, when it is born alive. And the [c] book in 1 E. 3.
never holden for law. And 3 Aſſ. p. 2. is but a repetition of
caſe. And ſo horrible an offence ſhould not go unpuniſhed.
ſo was the law holden [d] in Bractons time, *Si aliquis qui mulierem p*
nantem percuſſerit, vel ei venenum dederit, per quod fecerit abortivu
puerperium jam formatum fuerit; et maximè ſi fuerit animatum,
homicidium. And herewith agreeth Fleta: and herein the law
grounded upon the law of God, which ſaith, *Quicunque effu*
humanum ſanguinem, fundetur ſanguis illius, ad imaginem quippe
creatus eſt homo. If a man counſell a woman to kill the ch
within her wombe, when it ſhall be born, and after ſhe is deliv
of the childe, ſhe killeth it; the councellor is an acceſſory to
murder, and yet at the time of the commandement, or councell
murder could be committed of the childe *in utero matris*: the
ſon of which caſe proveth well the other caſe.

Malice prepenſed.] Firſt let us ſee what this malice is.

Malice prepenſed is, when one compaſſeth to kill, wound,
beat another, and doth it *ſedato animo.* This is ſaid in law to
malice forethought, prepenſed, *malitia præcogitata.* This malic
ſo odious in law, as though it be intended againſt one, it ſhal
extended towards another. * *Si quis unum percuſſerit, cum alium*
cutere vellet, in felonia tenetur.

[a] Chro. de Dunſtable, Holl. 252. Coram Juſtic. Itiner. in Com. Kanc. 18 E. 1. See the ſecond part of the Inſt. cap. Stat. de Judaiſmo.

[b] 22 E. 3. Coron. 263. 8 E. 2. Cor. 418. Stan. p. cor. 21. c.

[c] 1 E. 3. 23, 24. 3 Aſſ. p. 2.

[d] Bract. li. 3. f. 21. Fleta, lib. ca. 23.

[51]

Geneſis, c. 6. v. 6.

Dier. 3. Eliz. fol. 186.

Dier. 3 Mar. 128. Pl. Com. 474, 475, 476. Lib. 9. fol. 81. Agnes Gorge

https://archive.org/details/secondpartinsti00cokegoog

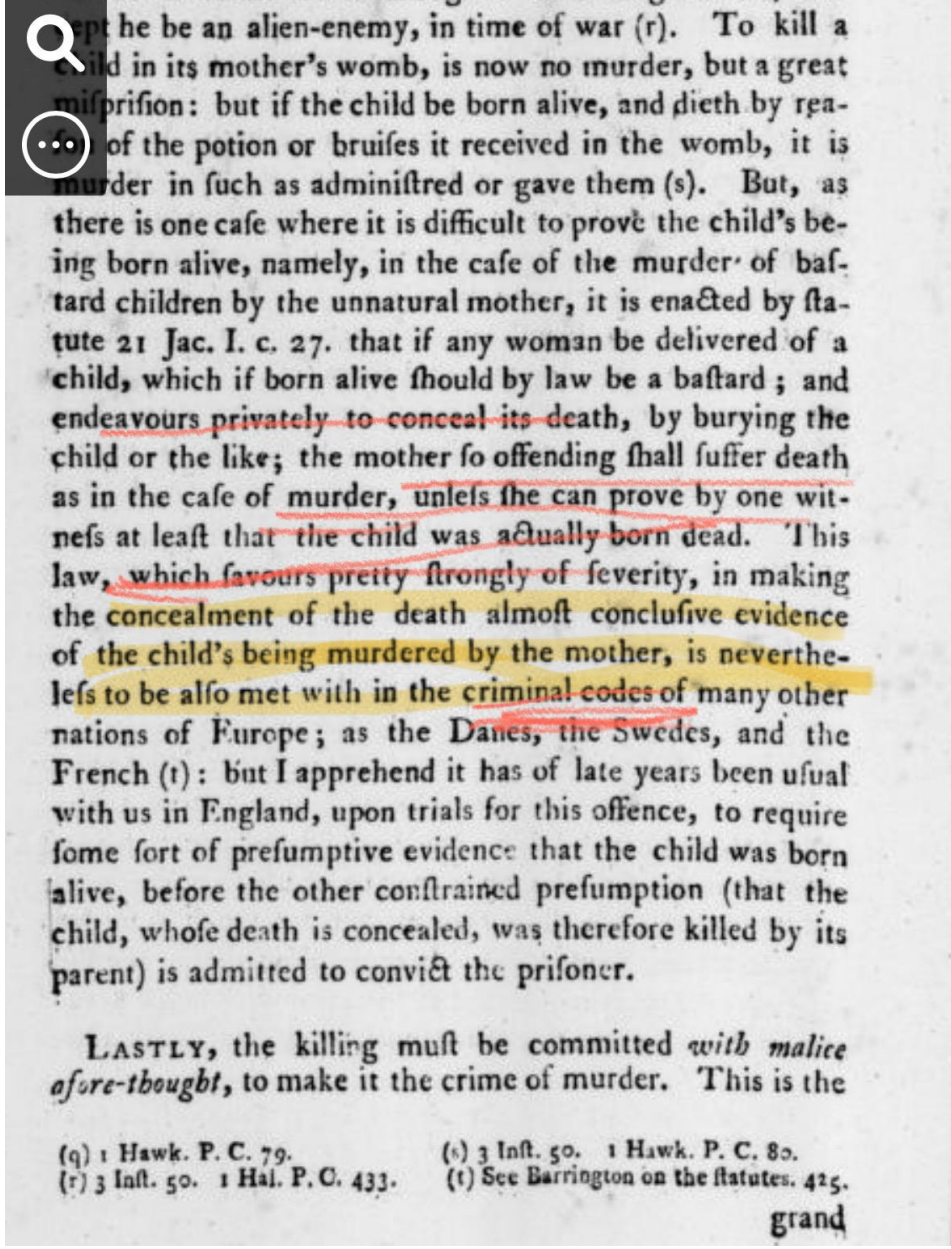
TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 40
HOMICIDE

18-4001. MURDER DEFINED. Murder is the unlawful killing of a human being including, but not limited to, a human embryo or fetus, with malice aforethought or the intentional application of torture to a human being, which results in the death of a human being. Torture is the intentional infliction of extreme and prolonged pain with the intent to cause suffering. It shall also be torture to inflict on a human being extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering. The death of a human being caused by such torture is murder irrespective of proof of specific intent to kill; torture causing death shall be deemed the equivalent of intent to kill.

History:

[18-4001, added 1972, ch. 336, sec. 1, p. 928; am. 1977, ch. 154, sec. 1, p. 390; am. 2002, ch. 330, sec. 1, p. 935.]

But, as there is one cafe where it is difficult to prove the child's being born alive, namely, in the cafe of the murder of bastard children by the unnatural mother, it is enacted by statute 21 Jac. I. c. 27. that if any woman be delivered of a child, which if born alive should by law be a bastard; and endeavors privately to conceal its death, by burying the child or the like; the mother so offending hall suffer death as in the cafe of murder, unless the can prove by one witness at least that the child was actually born dead. This law, which favors pretty strongly of severity, in making the concealment of the death almost conclusive evidence of the child's being murdered by the mother,



ept he be an alien-enemy, in time of war (r). To kill a child in its mother's womb, is now no murder, but a great miſprifion: but if the child be born alive, and dieth by rea- ſo of the potion or bruiſes it received in the womb, it is murder in ſuch as adminiſtred or gave them (s). But, as there is one caſe where it is difficult to prove the child's be- ing born alive, namely, in the caſe of the murder of baſ- tard children by the unnatural mother, it is enacted by ſta- tute 21 Jac. I. c. 27. that if any woman be delivered of a child, which if born alive ſhould by law be a baſtard; and endeavours privately to conceal its death, by burying the child or the like; the mother ſo offending ſhall ſuffer death as in the caſe of murder, unleſs ſhe can prove by one wit- neſs at leaſt that the child was actually born dead. This law, which favours pretty ſtrongly of ſeverity, in making the concealment of the death almoſt concluſive evidence of the child's being murdered by the mother, is neverthe- leſs to be alſo met with in the criminal codes of many other nations of Europe; as the Danes, the Swedes, and the French (t): but I apprehend it has of late years been uſual with us in England, upon trials for this offence, to require ſome ſort of preſumptive evidence that the child was born alive, before the other conſtrained preſumption (that the child, whoſe death is concealed, was therefore killed by its parent) is admitted to convict the priſoner.

LASTLY, the killing muſt be committed *with malice afore-thought*, to make it the crime of murder. This is the

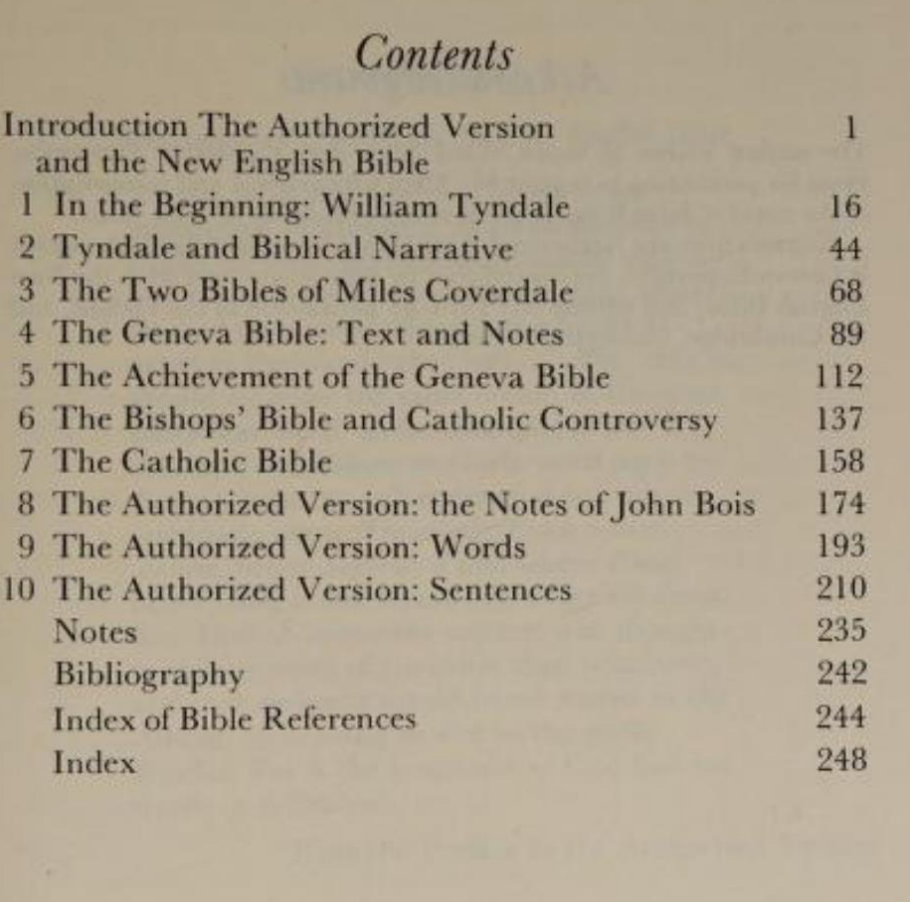
(q) 1 Hawk. P. C. 79.
(r) 3 Inſt. 50. 1 Hal. P. C. 433.
(s) 3 Inſt. 50. 1 Hawk. P. C. 80.
(t) See Barrington on the ſtatutes. 425.

grand

https://archive.org/details/bim_eighteenth-century_commentaries-on-the-laws_blackstone-sir-william-_1773_4

English Bibles

English Bibles, Bible Tools



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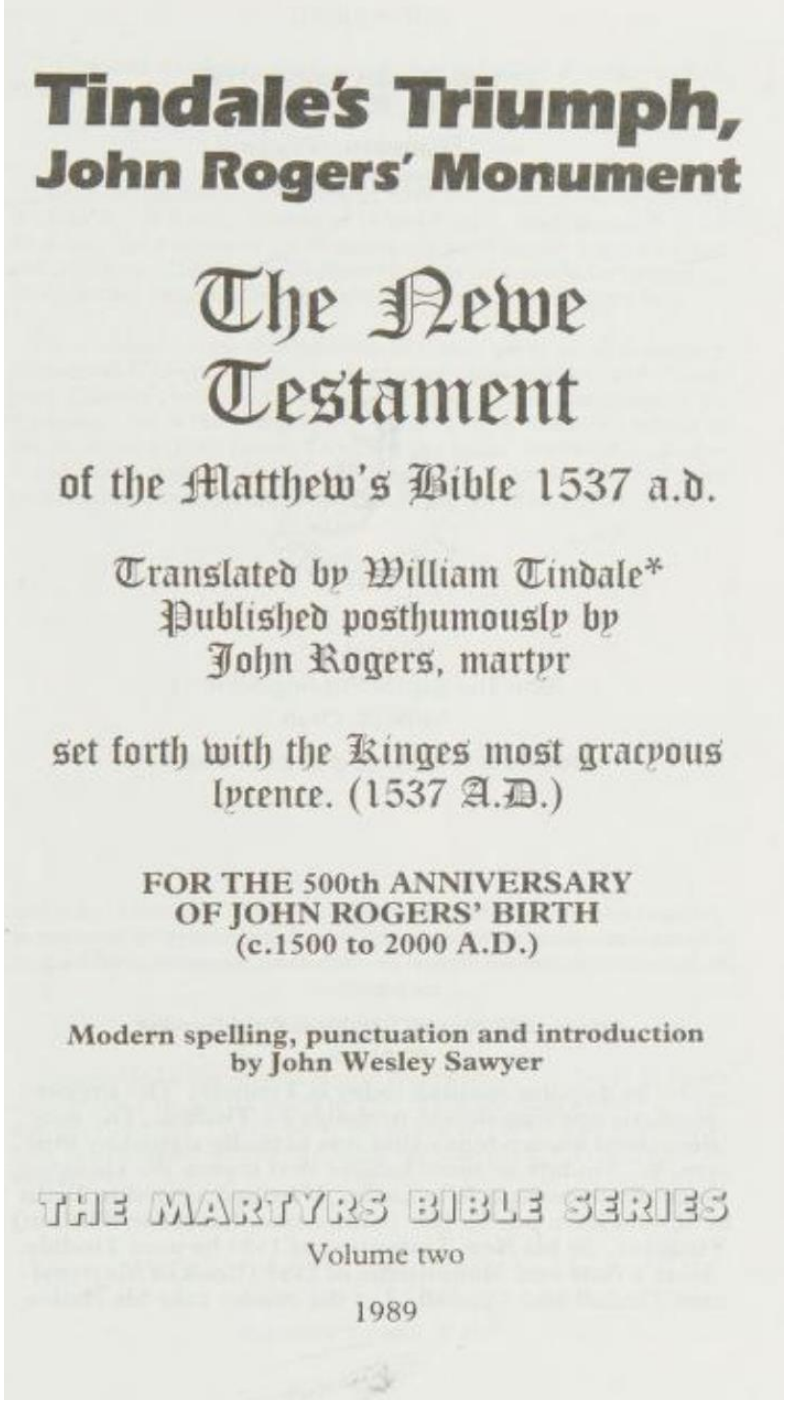

Tindale's Triumph,
John Rogers' Monument

The Newe Testament

of the Matthew's Bible 1537 a.d.

Translated by William Tindale*
Published posthumously by
John Rogers, martyr

set forth with the Kinges most gracyous lycence. (1537 A.D.)

FOR THE 500th ANNIVERSARY
OF JOHN ROGERS' BIRTH
(c.1500 to 2000 A.D.)

Modern spelling, punctuation and introduction
by John Wesley Sawyer

THE MARTYRS BIBLE SERIES
Volume two

1989

https://archive.org/details/tindalestriumphj0000unse

Bible translations
The Septuagint -The first complete translation of the Old Testament, created in the 3rd century B.C.
It became the standard Old Testament for Christians in the Greek-speaking world
Multiple **Vulgate** translations around **A.D. 200** , Latin speaking churches in North Africa, no manuscripts exist today .
Jerome's Vulgate: A Latin translation of the Bible . Pope Damascus I commissioned St Jerome to translate a standard Latin Bible A.D. 383 and 404. **He originally translated it all from Greek**, but as he went on he corrected the Old Testament against the Hebrew original. (The New Testament was originally written in **Koine Greek**.)
The Vulgate is usually credited as being the first translation of the Old Testament into Latin directly from the Hebrew Tanakh rather than from the Greek Septuagint
The **Codex Amiatinus** (also known as the **Jarrow Codex**) is considered the best-preserved of the Christian Bibles, It was produced around 700 in the northeast of England.It is considered the most accurate copy of Saint Jerome's original translation and was used in the revision of the Vulgate by Pope Sixtus V in 1585-90.
King Alfred the Great began a translation of the Psalms- 849-899 "The translation of the Psalms was Alfred's last project, being only one-third complete at the king's death. These psalms, primarily the songs of King David composed throughout the king of Israel's tumultuous reign, had always had a special place in Alfred's heart. Having memorized many of the psalms in his youth, Alfred had used these sacred words throughout his life to embolden himself in battle, encourage himself in despondency, humble himself in his sins, and comfort himself in his forgiveness. The entire spectrum of Alfred's personal trials and triumphs seemed to have been lived out already by the shepherd king of Israel. More than any other text, the book of Psalms had become the poetry of Alfred's life.][... Alfred felt this was a book that needed little assistance in speaking to the Anglo-Saxon heart."
http://rayvanneste.com/?p=640
https://archive.org/details/holybiblecontain03thom/page/n5/mode/2up
(Middle english, Old English)
Wycliffe's Bible 1382 to 1395. **The first full Bible translation into English. Wycliffe's Bible** or **Wycliffite Bibles** or **Wycliffian Bibles** (**WYC**) are names given for a sequence of Middle English Bible translations believed to have been made under the direction or instigation of English theologian John Wycliffe of the University of Oxford. They are the earliest known literal translations of the entire Bible into English (Middle English) They appeared over a period from approximately **1382 to 1395.**
Tyndale NT 1522
Tyndale Pentateuch 1530
Miles Coverdale's Bible 1535
(In the Pentateuch and New Testament of his 1535 Bible Coverdale used Tyndale's work as one of his chief sources.)
[making of the english Bible-Hammond]
https://archive.org/details/makingofenglishb0000hamm
The Matthew Bible, also known as ***Matthew's Version***, was first published in 1537 by John Rogers under pen name "Thomas Matthew". [combination of Tyndale's OT, part of his NT ... and the rest of Coverdale's NT]
The **Great Bible** Also known as the "Chained Bible because it was chained to church lecterns." **1539** -- **was the first authorised edition of the Bible in English, authorised by King Henry VIII** of England to be read aloud in the church ..
Cranmer's Bible printed **1539**... i**s the name given to the second through seventh editions** of the **Great Bible**, which was the first English Bible authorized for public use.
Geneva Bible Printed **1560**..
Bishop's Bible 1568
Rheim's NT 1582
Douai OT 1610
Over 3600 versions ..all translated from the same words from Hebrew/Greek/Aramaic
HebrewThe Old Testament was written almost entirely in Hebrew, with some Aramaic elements.
Aramaic: The Prophets and Apostles recorded some of the oral teaching of the Old Testament in Aramaic
Greek: The New Testament was recorded in Greek.
The Bible has been translated into at least 3,658 languages, including 736 languages with the entire Bible, 1,658 languages with the New Testament, and 1,264 languages with smaller portions.

en.m.wikipedia.org

Tyndale Bible	Geneva Bible	King James Bible
And the eyes of both them were opened that they vnderstode how that they were naked. Than they sowed fygge leves togedder and made them apurns.	Then the *eies* of them both were opened, and they knew that they were naked, and they sewed figge tree leaves together, and made themselves *breeches*.	Then the *eyes* of them both were opened, and they knew that they were naked, and they sewed figge tree leaves together, and made themselve *aprons*.

King James I and the

https://www.stepbible.org

AA blueletterbible.org

KJV TAP TO CHANGE MENU

Search *(e.g. John 3:16, Jesus faith love)*

Verse or Word(s) KJV

Help Quick Nav

COPY OPTIONS CITE SHARE PRINT

Lexicon :: Strong's H7225 - *rēʼšîṯ*

☐ Strong's ☐ Red Letter

רֵאשִׁית

Transliteration *rēʼšîṯ*

Pronunciation ray-sheeth' LISTEN

Part of Speech feminine noun

Root Word (Etymology)
From the same as רֹאשׁ (H7218)

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The Reliability of the Bible

"It just doesn't matter how you look at this. The New Testament, far and away, is the best attested ancient document from the Greco-Roman world."
- Daniel Wallace

2,600,000+ Pages of Greek NT Manuscripts

"In no other case is the interval of time between the composition of the book and the date of the earliest manuscripts so short as in that of the New Testament."
- Sir Frederic Kenyon

5,800+ Greek NT Manuscripts

"Do we have an embarrassment of riches? Oh, we sure do. In fact, on the basis of manuscript evidence we can say that we have 1,000 times more evidence that Jesus Christ existed than we do that Alexander the Great existed."
- Daniel Wallace

"There is no body of ancient literature in the world which enjoys such a wealth of good textual attestation as the New Testament."
- F. F. Bruce

36,000+ Patristic Quotations

"The New Testament is the best attested book in ancient history, both in terms of the number of manuscripts and the nearness of those manuscripts to the date of the original."
- William Lane Craig

"We have massive amounts of support for our convictions that the sixty-six books of the canonical Scriptures accepted by all branches of Christianity have been extraordinarily well preserved."
- Craig Blomberg

23,000+ Total NT Manuscripts

"The quantity of New Testament material is almost embarrassing in comparison with other works of antiquity."
- Bruce Metzger

Secretary of State is responsible for Publishing Statutes / Public Notice by publishing one newspaper in the District of Columbia, and in three newspapers in each state and territory

STATUTE.
219
(B) Of some Things incidental to a Statute.
to their representation.
The act of March 2, 1799, directs that the secretary of state shall, as soon as conveniently may be after he shall receive any order, resolution, or law passed by Congress, cause the same to be published in not less than one nor more than three newspapers in each state.]
[..The act of April 20, 1818, provides that
the publication shall be made in not more than one newspaper in the District of Columbia, and in three newspapers in each state and territory

https://archive.org/details/newabridgmentofl09bacouoft

though not particularly named [20 G. 2, c. 42, § 3. It becomes indeed impossible, when statutes relate to matters of a very miscellaneous nature, that the title can be co-extensive with the views of the legislature; it is therefore to be wished that such acts of parliament were distinct laws, and not thrown together in that very strange confusion which hath now obtained the name of a *hodge-podge* act. Barrington's Observations on the more Ancient Statutes, p. 449. See an instance of one of these acts in 17 G. 2, c. 40.]

The custom of prefixing titles to statutes did not begin till about the eleventh year of the reign of Henry the Seventh.(*e*)

Ld. Raym. 77; Chance v. Adams, Hard. 324. [(*e*) Instances have, however, occurred before this time. Barrington's Observations on the more Ancient Statutes, p. 449, *notis.*] β A practice has prevailed of late years to crowd into the same act a mass of heterogeneous matter, so that it is almost impossible to describe, or even to allude to it in the title of the act. The practice has rendered the title of little importance, yet, in some cases, it is material in the construction of an act. Bouv. L. D., title *Legislation;* 7 East, 132; Fisher v. Blight, 2 Cranch, 386. See Lord Raym. 77; Hard. 324.*g*

The preamble of a statute usually contains the motives and inducements to the making of it: but it has been holden that it is no part of the statute.

6 Mod. 62, Mills v. Wilkins; 8 Mod. 144. ‖ As to its use in construing statutes, see *post.*‖ β See also Seidenbender v. Charles, 4 S. & R. 166.*g*

(B) Of some Things incidental to a Statute.

WHEREVER the provision of a statute is general, every thing which is necessary to make such provision effectual is supplied by the common law.

1 Inst. 235; 2 Inst. 222.

If an offence be made felony by a statute, such statute does by necessary consequence subject the offender to the like attainder and forfeiture, and does require the like construction, as to those who shall be accounted accessaries before or after the fact, and to all other intents and purposes, as a felony at the common law does.

1 Hawk. c 41, § 4; 3 Inst. 47, 49, 50.

whereof some were by selling distresses, some by extortion of fines, as if betwixt extortion of fines, releasing of tortious distresses, and robbery there were difference.
☐ 19. He hanged Erkinvald because he hanged Franklin, for naught else but because he taught to him who vanquished by battle mortal to say the word of cravant. [...him who overcome in battle; subdued; defeated, to say the word of **Cravent:** a word of **obloquy: language that casts contempt on men**
☐ 20 He hanged Bermond because he caused Garbolt to be beheaded by his judgment in England, for that for which he was outlawed in Ireland.
☐ 21 He hanged Alkman **because he saved Cateman by colour of disseisin**, **who was attainted of burglary**
22 He hanged Saxmond because he hanged Barrold in England, where the king's writ runneth for a fact which he did in the same land where the king's writ did not run.
23 He hanged Alfet because he **judged a clerk to death, over whom he had not cognizance**.
24 He hanged Piron because he judged Hanting to death because he **gave judgment in appeal before the forty days pendant the appeal**, by a writ of false judgment before the king.
☐ 25 He hanged Diling because he **caused Eldon to be hanged, who killed a man by misfortune**.
☐26 He hanged Oswin because he **judged Fulcher to death out of court**.
☐27 H**e hanged Muclin, because he hanged Helgrave by warrant of indictment not special**.
☐ 28 He hanged Horne because he hanged Simin **at days forbidden.**
29 He hanged Wolmer because he judged Graunt to death by eslour of a lareeny of a thing, which he had received by title of bailment.
30 He hanged Therberne because he judged Osgot...]

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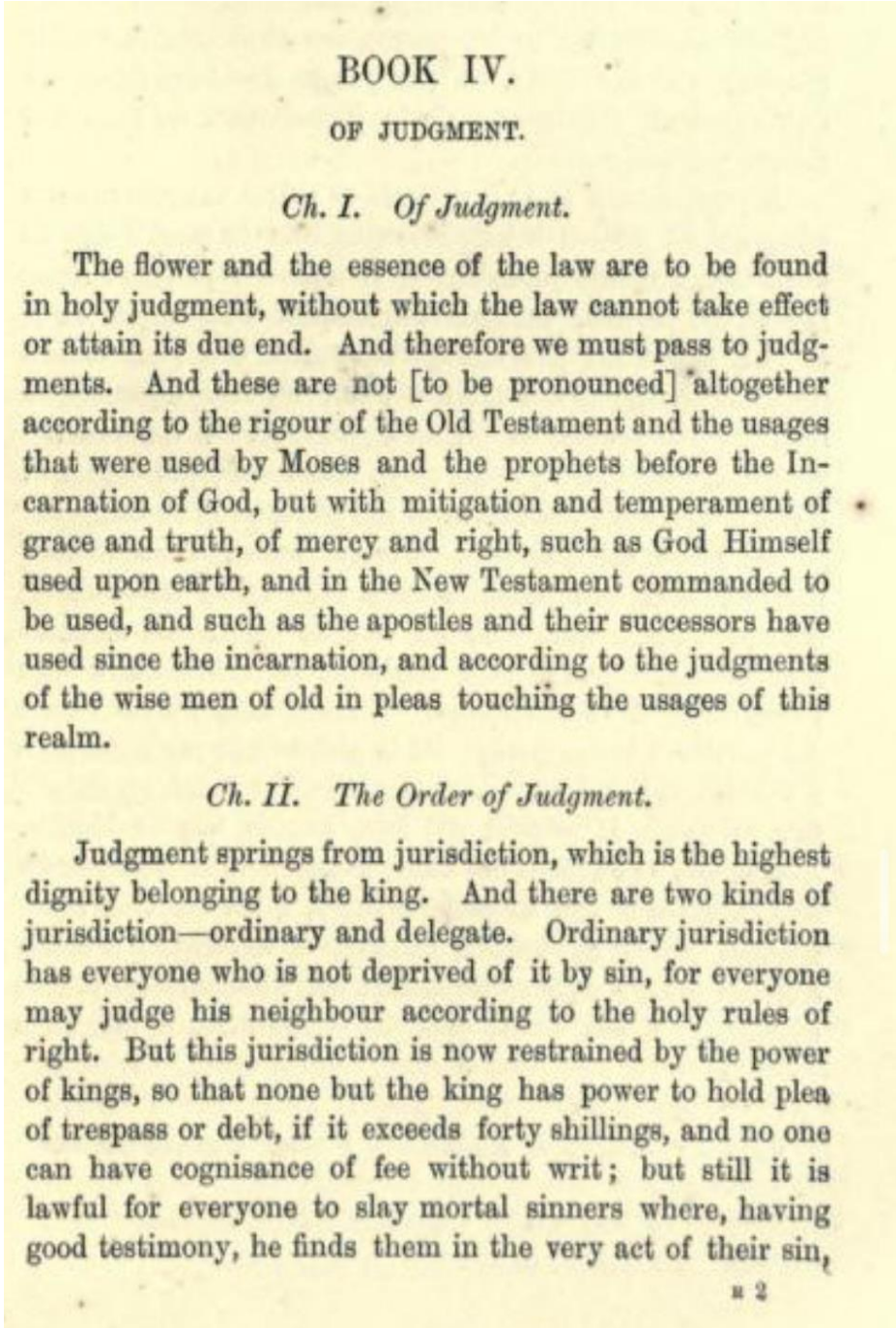
BOOK IV.
OF JUDGMENT.
Ch. I. Of Judgment.
The flower and the essence of the law are to be found in holy judgment, without which the law cannot take effect or attain its due end. And therefore we must pass to judgments. And these are not [to be pronounced] altogether according to the rigour of the Old Testament and the usages that were used by Moses and the prophets before the Incarnation of God, but with mitigation and temperament of grace and truth, of mercy and right, such as God Himself used upon earth, and in the New Testament commanded to be used, and such as the apostles and their successors have used since the incarnation, and according to the judgments of the wise men of old in pleas touching the usages of this realm.
Ch. II. The Order of Judgment.

Judgment springs from jurisdiction, which is the highest dignity belonging to the king. And there are two kinds of jurisdiction ordinary and delegate. Ordinary jurisdiction has everyone who is not deprived of it by sin, for everyone may judge his neighbour according to the holy rules of right. But this jurisdiction is now restrained by the power of kings, so that none but the king has power to hold plea of trespass or debt, if it exceeds forty shillings, and no one can have cognisance of fee without writ; but still it is lawful for everyone to slay mortal sinners where, having good testimony, he finds them in the very act of their sin,



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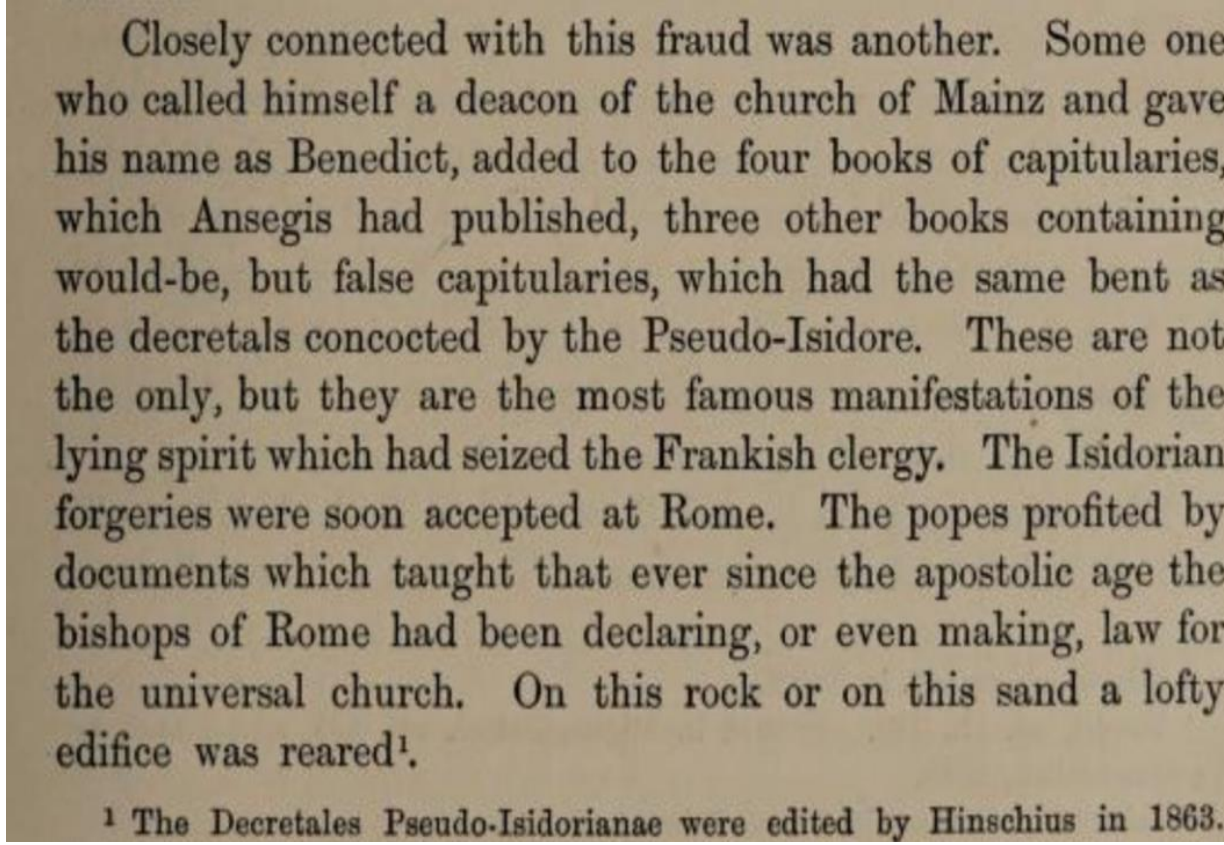
Isidorian forgeries

Closely connected with this fraud was another. Some one who called himself a deacon of the church of Mainz and gave his name as Benedict, added to the four books of capitularies, which Ansegis had published, three other books containing would-be, but false capitularies, which had the same bent as the decretals concocted by the Pseudo-Isidore. These are not the only, but they are the most famous manifestations of the lying spirit which had seized the Frankish clergy. The Isidorian forgeries were soon accepted at Rome. The popes profited by documents which taught that ever since the apostolic age the bishops of Rome had been declaring, or even making, law for the universal church. On this rock or on this sand a lofty edifice was reared'.



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[1] The Decretales Pseudo-Isidorianae were edited by Hinschius in 1863.

https://archive.org/details/historyofenglish01poll

Corruption in the forming of the territories

https://archive.org/details/lawsofnorthwestt17nort/page/n25/mode/1up

a colony on the Muskingum in eastern Ohio. The leaders of this group were known as conservative men, believers in strong government, and the proposed colony seemed to offer a basis for the establishment of stable government in the West. New York speculators, sensing the chance of a good profit in western lands, helped them to purchase of Congress on favorable terms. As an incident in the negotiation an Ordinance for the Government of the Territory Northwest of the Ohio already under consideration by Congress was amended to meet the views of the company's agents and passed July 13, 1787.[1]

We are concerned primarily with the provisions of this document touching law and legislation. The government of the territory was vested in a governor, a secretary, and three judges appointed by Congress. "Governor and judges, or a majority of them," were to legislate by adopting and publishing such laws of the original states criminal and civil as might be necessary. They were to be reported to Congress from time to time, and to be in force unless disapproved by it. With five thousand free male inhabitants of full age in the district, the governor was authorized to call an election of a lower house of assembly. This body was to nominate ten members of a council, five of whom were to be chosen by Congress. The two houses thus constituted

whether the power to legislate against it existed or no.[2]

The first legislation by Governor and judges was necessarily accompanied by controversy. In the first place the judges completely disregarded the provisions

[1] Western Reserve Historical Society *Tracts*, No. 97, pp. 107 ff.
[2] *Post*, 13.

of the ordinance that laws should be adopted from those of the states, and legislated independently. St. Clair condoned this in the case of the militia law because of the necessity, but had misgivings otherwise. "I suspect," he wrote the judges July 30, 1788, "we are over-

https://archive.org/details/lawsofnorthwestt17nort/page/n25/mode/1up

[…the Governor of this territory did accordingly employ Harry Toulmin, Esquire, one of the Judges of the same, to compile a Digest of the Statutes now-in force…]

“”An act Concerning divorce and alimony ;“

CHAP. V.

AN ACT *to adopt the Digest of the Laws of the Mississippi Territory, prepared agreeably to a resolution passed at the last Session of the General Assembly, and for other purposes therein mentioned.*

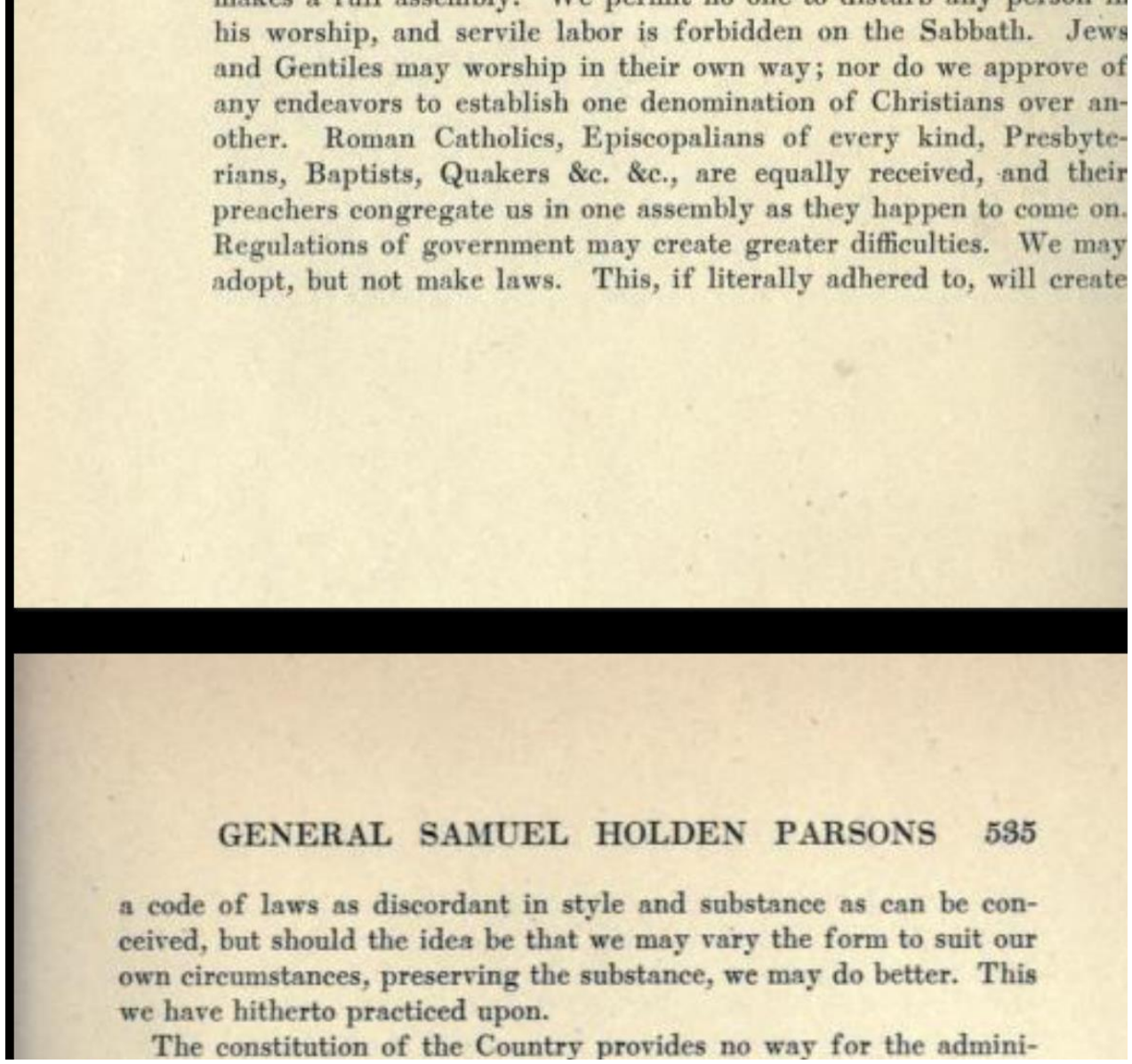
WHEREAS in consequence of a resolution of the General Assembly of this territory, passed at the last session, the Governor of this territory did accordingly employ HARRY TOULMIN, Esquire, one of the Judges of the same, to compile a Digest of the Statutes now-in force; and whereas the said Digest has been laid before the present General Assembly, and has been examined and amended:

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Mississippi Territory, in General Assembly convened,* That the said Digest, containing the acts hereinafter mentioned, is received and established as the law of the said territory, viz:—

"An act containing so much of former laws as establishes the territorial and county lines;"

https://archive.org/details/esrp769261771

Regulations of government may create greater difficulties. We may adopt, but not make laws. This, if literally adhered to, will create a code of laws as discordant in style and substance as can be conceived, but should the idea be that we may vary the form to suit our own circumstances, preserving the substance, we may do better. This we have hitherto practiced upon.



his worship, and servile labor is forbidden on the Sabbath. Jews and Gentiles may worship in their own way; nor do we approve of any endeavors to establish one denomination of Christians over another. Roman Catholics, Episcopalians of every kind, Presbyterians, Baptists, Quakers &c. &c., are equally received, and their preachers congregate us in one assembly as they happen to come on. Regulations of government may create greater difficulties. We may adopt, but not make laws. This, if literally adhered to, will create

GENERAL SAMUEL HOLDEN PARSONS 585

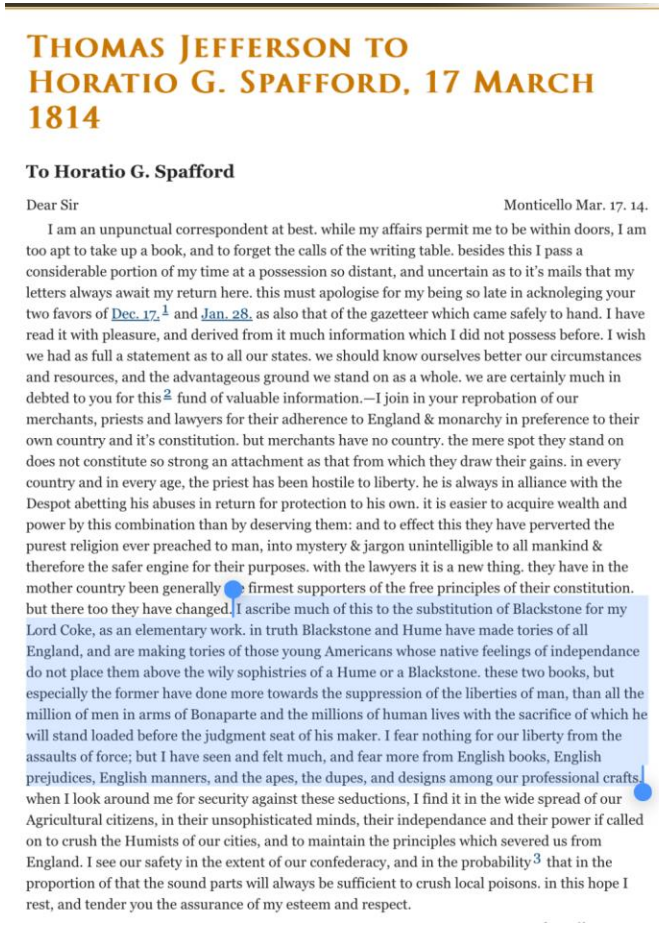
a code of laws as discordant in style and substance as can be conceived, but should the idea be that we may vary the form to suit our own circumstances, preserving the substance, we may do better. This we have hitherto practiced upon.

The constitution of the Country provides no way for the admini-

https://archive.org/details/lifelettersofsam00halluoft

Blackstone

Thomas Jefferson wrote that Blackstone did "[....more towards the suppression of the liberties of man, than all the million of men in arms of Bonaparte."



Thomas Jefferson to Horatio G. Spafford, 17 March 1814

To Horatio G. Spafford

Dear Sir Monticello Mar. 17. 14.

I am an unpunctual correspondent at best. while my affairs permit me to be within doors, I am too apt to take up a book, and to forget the calls of the writing table. besides this I pass a considerable portion of my time at a possession so distant, and uncertain as to it's mails that my letters always await my return here. this must apologise for my being so late in acknoleging your two favors of Dec. 17.[1] and Jan. 28. as also that of the gazetteer which came safely to hand. I have read it with pleasure, and derived from it much information which I did not possess before. I wish we had as full a statement as to all our states. we should know ourselves better our circumstances and resources, and the advantageous ground we stand on as a whole. we are certainly much in debted to you for this[2] fund of valuable information.—I join in your reprobation of our merchants, priests and lawyers for their adherence to England & monarchy in preference to their own country and it's constitution. but merchants have no country. the mere spot they stand on does not constitute so strong an attachment as that from which they draw their gains. in every country and in every age, the priest has been hostile to liberty. he is always in alliance with the Despot abetting his abuses in return for protection to his own. it is easier to acquire wealth and power by this combination than by deserving them: and to effect this they have perverted the purest religion ever preached to man, into mystery & jargon unintelligible to all mankind & therefore the safer engine for their purposes. with the lawyers it is a new thing. they have in the mother country been generally the firmest supporters of the free principles of their constitution. but there too they have changed. I ascribe much of this to the substitution of Blackstone for my Lord Coke, as an elementary work. in truth Blackstone and Hume have made tories of all England, and are making tories of those young Americans whose native feelings of independance do not place them above the wily sophistries of a Hume or a Blackstone. these two books, but especially the former have done more towards the suppression of the liberties of man, than all the million of men in arms of Bonaparte and the millions of human lives with the sacrifice of which he will stand loaded before the judgment seat of his maker. I fear nothing for our liberty from the assaults of force; but I have seen and felt much, and fear more from English books, English prejudices, English manners, and the apes, the dupes, and designs among our professional crafts. when I look around me for security against these seductions, I find it in the wide spread of our Agricultural citizens, in their unsophisticated minds, their independance and their power if called on to crush the Humists of our cities, and to maintain the principles which severed us from England. I see our safety in the extent of our confederacy, and in the probability[3] that in the proportion of that the sound parts will always be sufficient to crush local poisons. in this hope I rest, and tender you the assurance of my esteem and respect.

https://founders.archives.gov/documents/Jefferson/03-07-02-0167

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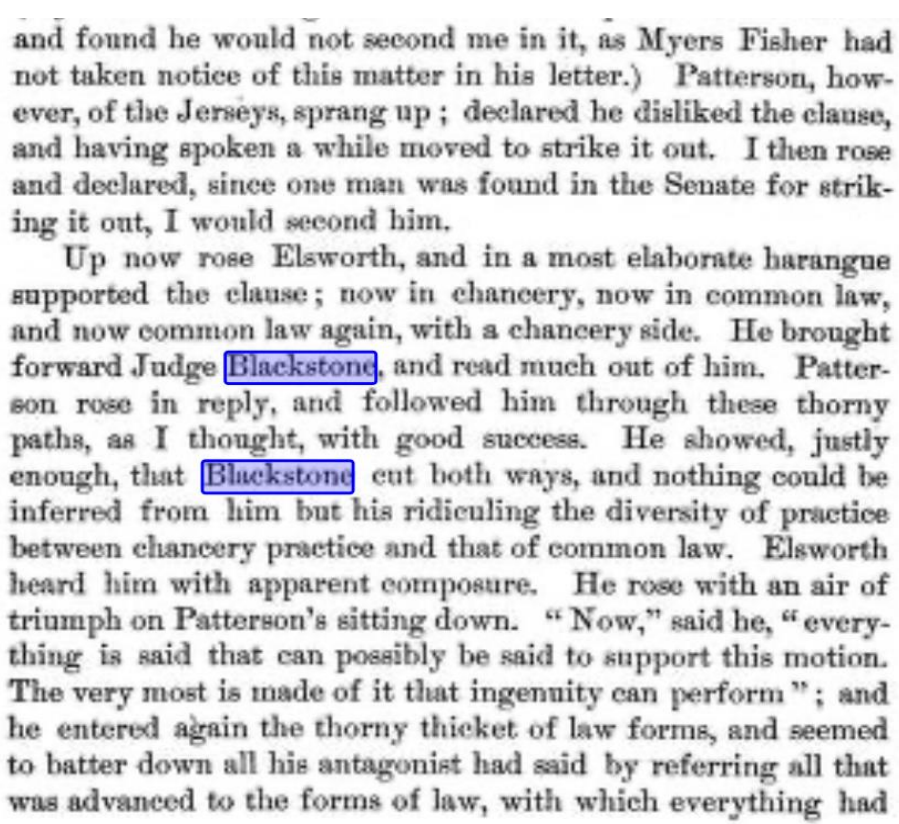
~~~Up now rose Elsworth, and in a most elaborate harangue supported the clause ; now in chancery, now in common law, and now common law again, with a chancery side~~~~He brought forward Judge Blackstone and read much out of him. Patterson rose in reply, and followed him through these thorny paths, as I thought, with good success. He showed, justly enough, that Blackstone cut both ways, and nothing could be inferred from him but his ridiculing the diversity of practice between chancery practice and that of common law.



and found he would not second me in it, as Myers Fisher had not taken notice of this matter in his letter.) Patterson, however, of the Jerseys, sprang up ; declared he disliked the clause, and having spoken a while moved to strike it out. I then rose and declared, since one man was found in the Senate for striking it out, I would second him.

Up now rose Elsworth, and in a most elaborate harangue supported the clause ; now in chancery, now in common law, and now common law again, with a chancery side. He brought forward Judge Blackstone, and read much out of him. Patterson rose in reply, and followed him through these thorny paths, as I thought, with good success. He showed, justly enough, that Blackstone cut both ways, and nothing could be inferred from him but his ridiculing the diversity of practice between chancery practice and that of common law. Elsworth heard him with apparent composure. He rose with an air of triumph on Patterson's sitting down. "Now," said he, "everything is said that can possibly be said to support this motion. The very most is made of it that ingenuity can perform" ; and he entered again the thorny thicket of law forms, and seemed to batter down all his antagonist had said by referring all that was advanced to the forms of law, with which everything had

https://archive.org/details/cu31924030423796
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